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ABSTRACT

This monograph identifies the rights and freedoms of public school students at the secondary and elementary levels, and discusses the legal limitations or modifications that school officials can place on those rights and freedoms. For this paper, the reviewer investigated published and unpublished literature and the pertinent judicial decisions rendered by State and Federal courts between 1960 and 1970. The reviewer notes firm trends in decisions on historical constitutional freedoms such as freedom of association, freedom of religion, and rights to procedural due process. There is no discernible pattern in other areas such as freedom of expression, freedom of dress and appearance, and freedom to learn. (Author/JF)

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Rights and Freedoms of Public School Students: Directions from the 1960s

Dale Gaddy

No. 2 in the NOLPE MONOGRAPH SERIES

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Dale Gaddy

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Table of Contents

INTRODUCTION 1

I. THE STUDENTS' RIGHTS MOVEMENT 2
- Influence of College Protestors 2
- Scope and Issues of Precollege Protest 3
- Administrative Response 5
- Students' Rights Position Papers 6
- Judicial Tones from Yesteryear 8

II. PHILOSOPHICAL AND JUDICIAL BASES 9
- Freedom of Expression 9
  - verbal expression 10
  - symbolic expression 11
  - written expression 16
- Freedom of Association 22
- Freedom of Dress and Appearance 25
  - clothing 26
  - beards 27
  - hair 27
- Freedom from Religion 33
- Freedom from Discrimination 34
- Freedom from Unauthorized Searches 37
- Freedom to Learn 39
- Freedom from Vague Regulations 40
- Right to Due Process 41
- Off-Campus Freedoms 45
- Rights of Married Students and Mothers 46

III. SUMMARY, CONCLUSIONS, AND PROJECTIONS 52
- Summary 52
- Conclusions 54
- Projections 55

BIBLIOGRAPHY 56

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FOREWORD

This monograph by Dale Gaddy is one of a series of state-of-the knowledge papers* dealing with the general topic of student control and student rights in the public schools. The papers were prepared through a cooperative arrangement between the ERIC Clearinghouse on Educational Management and the National Organization on Legal Problems of Education (NOLPE). Under this arrangement, the Clearinghouse provided the guidelines for the organization of the papers, commissioned the authors, and edited the papers for content and style. NOLPE selected the topics and authors for the papers and is publishing them as part of a monograph series.

Dr. Gaddy identifies the rights and freedoms of public school students at the secondary and elementary levels, and discusses the legal limitations or modifications that school officials can place on those rights and freedoms. For his paper, Dr. Gaddy investigated both the published and the unpublished literature and the pertinent judicial decisions rendered by state and federal courts between 1960 and 1970.

Dr. Gaddy is director of the Microform Project of the American Association of Junior Colleges. From 1968 to 1970, he was a research educationist for the ERIC Clearinghouse for Junior Colleges. He holds bachelor's and master's degrees from Appalachian State University, and received his doctor's degree from Duke University.

Dr. Gaddy has authored a variety of publications about the legal issues involved in student activism and student academic freedom, particularly at the higher education level. His most recent work is a report titled *The Scope of Organized Student Protest in Junior Colleges,* published in 1970 by the American Association of Junior Colleges.

Philip K. Piele, director
ERIC Clearinghouse
on Educational Management

John Phillip Linn, past-president
National Organization on Legal
Problems of Education

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*The other four papers are: (1) *Legal Aspects of Control of Student Activities by Public School Authorities,* by E. Edmund Reutter, Jr., professor of education, Columbia University; (2) *Suspension and Expulsion of Public School Students,* by Robert E. Phay, associate professor of public law and government, University of North Carolina; (3) *Crime Investigation and Prevention in the Public Schools,* by William G. Buss, professor of law, University of Iowa; and (4) *Student Records,* by Henry E. Butler, Jr., professor of educational administration, University of Arizona.

ERIC and ERIC/CEM

The Educational Resources Information Center (ERIC) is a national information system operated by the United States Office of Education. ERIC serves the educational community by disseminating educational research results and other resource information that can be used in developing more effective educational programs.

The ERIC Clearinghouse on Educational Management, one of twenty such units in the system, was established at the University of Oregon in 1966. The Clearinghouse and its nineteen companion units process research reports and journal articles for announcement in ERIC's index and abstract bulletins.

Research reports are announced in *Research in Education (RIE)*, available in many libraries and by subscription for $21 a year from the United States Government Printing Office, Washington, D.C. 20402. Most of the documents listed in *RIE* can be purchased through the ERIC Document Reproduction Service, operated by the National Cash Register Company.

Journal articles are announced in *Current Index to Journals in Education*. *CIJE* is also available in many libraries and can be ordered for $34 a year from CCM Information Corporation, 909 Third Avenue, New York, New York 10022. Annual and semiannual cumulations can be ordered separately.

Besides processing documents and journal articles, the Clearinghouse has another major function—information analysis and synthesis. The Clearinghouse prepares bibliographies, literature reviews, state-of-the-knowledge papers, and other interpretive research studies on topics in its educational area.

NOLPE

The National Organization on Legal Problems of Education (NOLPE) was organized in 1954 to provide an avenue for the study of school law problems. NOLPE does not take official positions on any policy questions, does not lobby either for or against any position on school law questions, nor does it attempt in other ways to influence the direction of legislative policy with respect to public education. Rather it is a forum through which individuals interested in school law can study the legal issues involved in the operation of schools.

The membership of NOLPE represents a wide variety of viewpoints—school board attorneys, professors of educational administration, professors of law, state officials, local school administrators, and executives and legal counsel for a wide variety of education-related organizations.

Other publications of NOLPE include the NOLPE SCHOOL LAW REPORTER, NOLPE NOTES, and the NOLPE SCHOOL LAW JOURNAL.

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National Organization on Legal Problems of Education
825 Western Avenue
Topeka, Kansas 66606

RIGHTS AND FREEDOMS OF PUBLIC SCHOOL STUDENTS: DIRECTIONS FROM THE 1960s

By Dale Gaddy*

Introduction

"Last year, some 6,000 'incidents'—ranging from racial strife through political protests to arson attempts—were registered in the nation's public high schools," according to a recent report in a national news magazine.

> The wave of student activism that engulfed college campuses in the late '60s is now beginning to hit high schools in full force, "radicalizing" many of the brightest and most politically aware students just as it did their elders a few years ago . . . [88:65].

Much of the violence experienced in the nation's educational system in recent years stems from man's inner drive to achieve full recognition of his rights and freedoms. At the dawn of the 1960s, this movement was led by civil rights activists bent on gaining equality for minority groups in the United States—particularly black Americans. College and university students in large numbers soon became allied with these crusaders, and many spent their summer vacations helping to register black voters in the Deep South and elsewhere. Returning to their campuses with rejuvenated or newly gained vigor for idealism, college students began organizing among themselves in attempts to acquire certain rights and freedoms at their respective institutions.

The cradle of the student activist movement was the University of California at Berkeley where, in 1964, the Free Speech Movement catapulted organized student protest into the national limelight. By the end of the decade, the movement had spread like a tidal wave across the nation's college campuses, spilling over into the political, judicial, and social arenas as well.

Inevitably, younger students in elementary and secondary schools began to espouse the ideals of their older peers, and they backed their espousals with protests that, at times, erupted in vio-

*Director, Microform Project, American Association of Junior Colleges, Washington, D.C. (Prepared as State-of-the-Knowledge paper for ERIC/CEM, January 1970).

lence. Thus unfurled, the banner of students' rights and freedoms continues to signal the plight of American education in the 1970s.

Do students at the secondary and elementary school levels have rights and freedoms? If they do, must they sacrifice these rights and freedoms in pursuit of their studies? These are the central questions of this treatise. In seeking answers to these questions, an investigation was made of both the published and unpublished literature and the pertinent judicial decisions rendered by state and federal courts between 1960 and 1970.

I. THE STUDENTS' RIGHTS MOVEMENT

Influence of College Protestors

It is generally acknowledged that today's youth is the best-informed generation in the history of the world. Aware of the events and circumstances surrounding disturbances at the Berkeleys and Columbias of higher education, precollege youths undoubtedly have been influenced by college activists—either indirectly via the news media or directly through personal contact.

"There is no doubt in my mind," states Samuel Graves in a recent issue of the *NASSP Bulletin*, "but that the unrest in our schools and colleges is nurtured by a national organization. SDS [Students for a Democratic Society] is, of course, the prime suspect as college chapters are openly encouraging and sponsoring high school chapters" [53:196].

Metzner notes the following assertion by the interorganizational secretary of SDS in 1968: "Our high schools will be the new thrust. They are used as babysitting jails. They are used to trap people into stupid colleges to train them for jobs they don't want. They are oppressive" [63:4].

SDS's recruitment activity has also been observed by Shaffer:

> The Students for a Democratic Society, which started on college campuses, has been trying to recruit members in the high schools. They have had the greatest success in high schools located near college campuses, which supply many of the organizers for the movement. Michael Klensky, S.D.S. national secretary, said recently that the average age of S.D.S. members was getting lower. "Our biggest growth," he said, "has been among high school and junior high school students." [80:639]

Other organizations may also be encouraging activism among younger students. Whether they are or not, the fact that college students (as individuals or as members of organizations) have won recognition of certain previously unrecognized rights and free-

doms has influenced students in secondary and even elementary schools.

Regardless of the source of agitation, violence, seemingly for its own sake, is increasing in the schools at unprecedented rates. But why? Los Angeles District Attorney E. L. Younger perhaps summarized it best by listing the following ingredients of educational violence:

1. A permissive society in which persons adopt the attitude that they will obey those laws they like and ignore those they do not like.
2. Substandard schools, oftentimes in the very areas where the best teachers and facilities are needed.
3. Untrained and unqualified administrators who are unable to cope with such subjects as mob psychology and guerrilla tactics.
4. Highly educated teenagers with time on their hands and a high degree of social consciousness and impatience with the slow progress in solving problems.
5. Professional trouble-makers who create disruptions.
6. Increasingly militant teachers [90:513].

Scope and Issues of Precollege Protest

Protest and violence are rapidly becoming commonplace in the nation's school system. Trump and Hunt's survey of 1,982 junior or senior high school principals showed that protest is found in 67 percent of the nation's urban and suburban schools and in 53 percent of the rural schools [87:151].

Newspapers reported on 225 disorders and disruptions in the nation's high schools during the first three months of the 1969-70 school year [38:7].

Drug use by students is extensive in half of the nation's urban schools and in 30 percent of the rural schools (with 100,000 *heroin* addicts in New York City's high schools alone) [5:7].

A survey by the Baltimore school system showed that vandalism in 1967-68 accounted for damages of $2,700,000 in New York City, $940,100 in Los Angeles, $716,600 in Baltimore, $683,500 in Tampa, $535,000 in Boston, $410,500 in the District of Columbia, $407,000 in Milwaukee, $346,400 in Newark, $309,000 in Oakland, and $253,800 in Kansas City [80:641].

As noted in a 1970 American Council on Education research report, the proportion of college freshmen who had taken part in demonstrations during their precollege years has increased steadily:

> In 1966, 16 percent of entering college freshmen stated that they had participated in a demonstration during the preceding year; of the 1969 enter-

> ing freshmen, substantially more than two-fifths, and probably more than one-fourth, had participated in some demonstration involving either high school, racial, or military policies. [12:23]

Writing in the *American School Board Journal*, Gregory Anrig states: "The college protestors still get most of the attention, but the fact is there already have been more incidents of student unrest in the *high schools* than in the colleges" [9:20].

Indeed, according to *Newsweek*, some 6,000 incidents of protest were registered in America's public schools in 1969. Compare this with a 1968 study released by the United States National Student Association that showed only 221 college demonstrations on 101 American campuses the year before [68:3]. Anrig avers that "the potential for disturbances in high schools is impressive. There are, after all, no more than 1,600 four-year colleges and universities in the country. But there are *twenty-six thousand* high schools with two and a half times the enrollment of the colleges" [9:21].

Whatever the extent of activism among elementary and secondary school students, whatever the causes, whatever the driving forces, the overriding facts, as stated by Plasco, appear to be that

> the pre-college student wants the benefit of a public education without sacrificing his personal and political beliefs. To attain his freedom he often defies authority. The school's interests are in efficient, effective and orderly conduct of the public school system. Conformity, discipline, and the enforcement of moral and political values are said to be the primary concerns of schools officials. [69:143]

Shaffer describes the issues of the students' rights movement:

> Much of the students' rights crusade is directed at freeing the high school pupil from pettifogging regulations that routinize his day, deprive him of small freedoms, and subject him to nuisance penalties for infractions of what the pupil considers "stupid" rules. The students' rights movement has also challenged the arbitrary right of the school to suspend or expel students—a punishment more fearful for many of today's college-bound students than a birching at the hands of an old-fashioned schoolmaster—for offenses which students do not consider offenses at all. Still another important direction of the crusade is toward the demand for a more "relevant" education, that is, the provision of courses and the reform of instructional programs to bring them more closely into line with student interests. [80:647]

The survey by Trump and Hunt [87] reported that the issues raised by protesting students centered on school regulations at a

third of the respondent schools, race relations and other social or political issues at a fourth of the schools, and the instructional program at half of the schools.

Administrative Response

When students claim certain rights and freedoms, and school officials strive to maintain the status quo, some friction is bound to result. Often the friction is aborted by the suspension or expulsion of the "trouble-maker(s)." But such practices, at both college and precollege levels, in recent years have come under more intensive and frequent scrutiny by individuals, organizations, and courts. A 1968 law review points out the gravity of such administrative recourses, particularly in secondary and elementary schools:

> . . . public school education is a more valuable interest and thus should be more strictly protected than public *or* private college instruction. Where a public school education is granted by right, a college education is largely a matter of choice. Moreover, because a public school education must already have been achieved, a suspension or expulsion from college involves a less drastic deprivation of educational possibilities than similar removal from public school. [27:352]

Fourteen years earlier, the United States Supreme Court announced in *Brown v. Board of Education of Topeka* [101:493], "[I]t is doubtful that any child may reasonably be expected to succeed in life if he is denied the opportunity of an education."

At issue is not the authority of school officials to suspend, expel, or otherwise discipline students; rather, the issue is the legal limitations or modifications that school officials can place on the constitutional rights and freedoms of students.

Prior to the 1960s, few challenges to administrative infringements on such rights and freedoms were reported in the literature or in court proceedings, and few individuals or organizations within or without the educational community rallied to the support of students. Plasco observes:

> Until recently, the general public and the legal profession have had little concern about the civil rights of the individual student in our public educational system. The student has been forced to fight his own battle against school regulations and penalties and the procedures by which these regulations have been enforced. The result often has been the loss of some of his personal freedoms. [69:143]

More and more, school officials will have to consider carefully, in light of judicial decisions, their courses of action in dealing with

militant students. Expulsion and suspension as administrative recourses no longer occupy the unquestioned altar of yesteryear.

Students' Rights Position Papers

Since modern student activism began at the college level, it is not surprising that the first formal position papers on students' rights were formulated by higher education organizations [81:254-257; 82:447-449]. In 1967, for example, the representatives of five national associations—the American Association of University Professors, the United States National Student Association, the Association of American Colleges, the National Association of Student Personnel Administrators, and the National Association of Women Deans and Counselors—drafted the "Joint Statement on Rights and Freedoms of Students" [56:363-368]. Considered the most comprehensive statement on students' rights yet produced, the document has been endorsed by each of its national sponsors as well as by the American Association for Higher Education, the Jesuit Educational Association, the American College Personnel Association, the Executive Committee of the National Catholic Education Association's College and University Department, and the American Association of Junior Colleges' Commission on Student Personnel.

The "Joint Statement" consists of a preamble and six major sections: (1) freedom of access to higher education (admissions policies), (2) freedom in the classroom (expression, academic evaluation, and disclosure of information regarding ability and character of students), (3) student records (contents of transcripts and access thereto), (4) freedom on the campus (association, inquiry and expression, institutional government, and publications), (5) off-campus freedom (citizenship and civil law), and (6) standards in disciplinary proceedings (standards of conduct for students, investigation of student conduct, status of student pending final action, and hearing committee procedures).

The influence of this document on the students' rights movement at the college level has been substantial. Undoubtedly it has also influenced the thinking of informed students and school officials of secondary and elementary institutions.

Other recent documents pertaining to students' rights in higher education include *Academic Freedom and Civil Liberties of Students in Colleges and Universities,* published in 1965 [6], and *Academic Freedom, Academic Responsibility, and Academic Due Process,* published in 1966 [7]. Both originated with the American Civil Liberties Union (ACLU).

Relating specifically to secondary schools are a 1968 paper by the ACLU entitled *Academic Freedom in the Secondary Schools* [8] and a 1969 paper by Robert Ackerly entitled *The Reasonable Exercise of Authority* [2]. Ackerly is chief counsel for the National Association of Secondary School Principals. Both papers cover such areas as freedom of expression and communication, freedom of association, the right to petition, student government, student discipline, personal appearance, and freedom from discrimination. The rights of married and/or pregnant students are endorsed in the ACLU document, but are not treated in Ackerly's. Conversely, the possession of drugs receives attention by Ackerly, but not by the ACLU.

Ackerly wrote his paper "to provide principals and other administrators with information and guidance . . . in the hope that such information will help them stay out of the courts" [2:2].

In its statement the ACLU maintains that the principles of academic freedom and civil liberties of college students are applicable to secondary schools. As the ACLU acknowledges, however, such principles must be viewed in the context of certain differences between the two levels of education.

> First, the primary functions of the secondary school as a transmitter of knowledge and as a force for the inculcation of the community's culture contrasts with the greater emphasis on research and enhancement of knowledge characteristic of the colleges and universities. This closer affiliation of the secondary school with the local community and its values militates against the system's ability to view itself as an independent academic community, a conception which strongly influences colleges and universities. Second, for all secondary schools the relative immaturity of the students also requires greater prudence in the extension of freedom to them than seems necessary in higher educational institutions. [8:4]

Regarding the principles themselves, the ACLU advocates:

1. A recognition that freedom implies the right to make mistakes and that students must therefore sometimes be permitted to act in ways which are predictably unwise so long as the consequences of their acts are not dangerous to life and property, and do not seriously disrupt the academic process.
2. A recognition that students in their schools should have the right to live under the principle of "rule by law" as opposed to "rule by personality." To protect this right, rules and regulations should be in writing. Students have the right to know the extent and limits of the faculty's authority and, therefore, the powers that are reserved for the students and the responsibilities that they should accept. Their rights should not be compromised by faculty members who, while ostensibly acting as consultants or counselors, are, in fact, exercising authority to censor student expression and inquiry.

3. A recognition that deviation from the opinions and standards deemed desirable by the faculty is not *ipso facto* a danger to the educational process.

Judicial Tones from Yesteryear

Unbelievable though it may at times seem to litigants, federal and state jurists are human beings. And human beings—even judges—are not altogether removed from the mores or conventions of their time. So it was that in 1859, when teachers were more feared and revered than today, the Vermont Superior Court ruled against a student who, during after-school hours, had called his schoolmaster "old Jack Seaver" [125]. The court termed this act "a direct and immediate tendency to injure the school and bring the master's authority into contempt," and declared that it justified the schoolmaster's thrashing the student with a small rawhide the day following the verbal assault. In its sweeping opinion, the court said:

> Acts done to deface or injure the schoolroom, to destroy the books of scholars, or the books or apparatus for instruction, or the instrument of punishment of the master; language used to other scholars to stir up disorder and insubordination, or to heap odium and disgrace upon the master; writings and pictures placed so as to suggest evil and corrupt language, images and thoughts to the youth who must frequent the school; all such or similar acts tend directly to impair the usefulness of the school, the welfare of the scholars and the authority of the master. By Common consent and by the universal custom in our New England schools, the master has always been deemed to have the right to punish such offenses. Such power is essential to the preservation of order, decency, decorum and good government in schools. [125:121]

A 1921 case further illustrates judicial interpretations of yesteryear [137]. The case originated when Pearl Pugsley, eighteen years of age, was denied admission to a school in Clay County, Arkansas, for wearing talcum powder on her face in violation of a board of directors regulation that read, in part, "The wearing of transparent hosiery, low-necked dresses or any style of clothing tending toward immodesty in dress, or the use of face paint or cosmetics, is prohibited." A suit was filed for a writ of mandamus requiring the student's admission to school despite her refusal to obey the rule. The lower court denied her petition. Subsequently, the case was appealed to the state supreme court, which upheld the rule as reasonable.

In view of present society's less-formal manner of speech and dress, it is difficult to imagine modern-day courts rendering decisions like these. Judicial interpretations often reflect their era as

well as the legal principles involved. As Bolmeier notes, "Even though the courts will usually follow precedents in rendering decisions, it has been frequently held that they need not do so where conditions and facts are widely different because of changing times" [14:88].

II. PHILOSOPHICAL AND JUDICIAL BASES

Freedom of Expression

An open and active pursuit of knowledge is the underlying principle of American education. Conditions that inhibit such a pursuit have been castigated by increasing numbers of educators, students, attorneys, jurists, and laymen.

Philosophically, student freedom of expression has perhaps been best described as "the freedom to express and to defend views or beliefs, and the freedom to question and to differ, without authoritative repression and without scholastic penalization . . ." [62:207]. But does this mean the *absolute* freedom to express one's views at any time, at any place, in any manner? Can a state, in performing its duty to provide universal education for its youth, impose any limitation on this freedom? A recent issue of the *Harvard Law Review* suggests that a state "may be able to impose much more severe restrictions on demonstrative activity at the high school level [and, presumably, at the elementary school level] conducted during school time because of its responsibility to use limited student time most efficiently" [32:1132].

According to Ackerly, restrictions of students' freedom of expression are illegal unless the orderly conduct of classes and school work is obstructed. "Students may freely express their points of view provided they do not seek to coerce others to join in their mode of expression and provided also that they do not otherwise intrude upon the rights of others during school hours" [2:7].

The ACLU takes a similar position:

> . . . students have the right to express publicly and to hear any opinion on any subject which they believe is worthy of consideration. . . . Restrictions may be tolerated only when they are employed to forestall events which would clearly endanger the health or safety of members of the school community or clearly and imminently disrupt the educational process. [8:11]

On freedom of expression for the student press, the ACLU states:

> . . . students should be permitted and encouraged to join together to produce such publications as they wish. Faculty advisors should serve as con-

> sultants on style, grammar, format and suitability of the materials. Neither the faculty advisors nor the principal should prohibit the publication or distribution of material except when such publication or distribution would clearly endanger the health or safety of the students, or clearly and imminently threaten to disrupt the educational process, or might be of a libelous nature. [8:11-12]

Unlike the ACLU, Ackerly discusses the "underground press," which he suggests "should not be prohibited, assuming that they . . . observe the normal rules for responsible journalism" [2:17]. Regarding the distribution of underground newspapers, Ackerly states that school officials may prohibit such activity during school hours and may designate acceptable distribution points for before- or after-school distribution.

Federal and state courts during the 1960s decided more than a dozen cases centering on freedom of expression at the elementary or secondary school levels. These are presented under the subheadings "Verbal Expression," "Symbolic Expression," and "Written Expression."

Verbal Expression

Although several of the "expression" cases decided during the past decade skirted the issue of verbal or actual expression, only two faced it directly. The first, *Byrd v. Gary* [105] was announced on May 18, 1960. It originated when three high school students in Darlington, South Carolina, were sent home for attempting to organize a student boycott of their school's cafeteria. The students petitioned a federal district court for relief, but were denied. The court held that the discretionary action taken by the school officials was not a violation of the students' constitutional or civil rights.

In *Brown v. Greer* [102], decided in 1969, students who had participated in a number of school demonstrations also were denied relief by a federal district court. In that instance, several students at a public school in Sharkey County, Mississippi, had used profane language in verbally assaulting school officials, had been involved in altercations with fellow students, had disrupted classes, and had physically assaulted a teacher and the school principal. Consequently, five of the students were suspended for the balance of the school year. In denying the students a temporary restraining order, the court termed the student conduct "reprehensible in nature and outside the protection afforded these plaintiffs by the United States Constitution" [102:601]. Furthermore, the court ex-

pressed concern "that if actions of the type involved herein . . . are not punished and discouraged, they will not only lead to anarchy but will result in a suppression of the liberty and autonomy that are the lifeblood of a democracy and its educational institutions" [102:602].

Symbolic Expression

Symbolic expression was one ~~of~~ the most fertile fields in the litigation of precollege students' rights during the 1960s. Three cases dealt with the wearing of provocative buttons; three others with the wearing of armbands.

In *Burnside v. Byars* [103] a rule that prohibited the wearing of "freedom buttons" was declared an unreasonable infringement on the students' rights to free expression as guaranteed by the First and Fourteenth Amendments. The case grew out of an incident at Booker T. Washington High School in Philadelphia, Mississippi.

Several days before September 21, 1964, the school principal learned that several of his students were wearing buttons obtained from the Council of Federated Organizations. Printed around the perimeter of each button was the phrase "One Man, One Vote," and, in the center, the letters "SNCC." The principal called a special assembly of the student body and informed them that they could not wear the buttons at school because the buttons had no bearing on their education, would cause commotion, and would disturb the school program.

On September 21, three or four students wore the buttons to school. Given the opportunity to remove the buttons and to remain at school, three of the students declined and were therefore dismissed. The following day, they returned to school without the buttons and were reinstated.

Three days later, more than thirty students wore the freedom buttons to school. Most of them refused to remove the buttons and they were suspended from school for one week. Parents of three of the students instigated court action that led to an injunction against the school officials on July 21, 1966.

In the same federal court the same day was the case of *Blackwell v. Issaquena County Board of Education* [97], a civil rights case evolving out of a series of efforts by school students in Mississippi to wear and distribute freedom buttons depicting a black hand and a white hand joined. The initials "SNCC" were also printed on these buttons.

The first incident occurred on Friday, January 29, 1965, when several students wearing the freedom buttons caused a disturbance by talking noisily in a hall after classes had begun. The school principal told three students that the buttons could not be worn at school.

The following Monday, approximately 150 pupils wore buttons to school and distributed others to students in the school corridor. Buttons were pinned on a few students even though they did not ask for them, and a state of confusion followed. The students were assembled in the school cafeteria and again told that the buttons could not be worn at school. Some of the students displayed hostility.

On Tuesday, some 200 students wore the prohibited buttons at school. They were informed that, if they wore the buttons again, they would be suspended. A number (no definite figure was reported in the court record) of students returned to school Wednesday wearing the buttons. Upon being dismissed from school, some of the students created further disturbances on their way out of the building. By the end of the week, approximately 300 students throughout the school district had been suspended. Those who remained at home after a period of twenty days were suspended for the rest of the school year.

A plea for a mandatory injunction was filed on April 1, 1965, in an attempt to gain the students' readmission to school and to obtain permission for them to wear freedom buttons as long as no disturbances resulted. Affirming the lower court's decision to deny relief, the court said:

> The proper operation of public school systems is one of the highest and most fundamental responsibilities of the state. The school authorities in the instant case had a legitimate and substantial interest in the orderly conduct of the school and a duty to protect such substantial interests in the school's operation. Again we emphasize the difference in the conduct here involved and that involved in *Burnside*. In this case the reprehensible conduct described above was so inexorably tied to the wearing of the buttons that the two are not separable. In these circumstances we consider the rule of the school authorities reasonable. As we said in *Burnside*, "It is not for us to consider whether such rules are wise or expedient but merely whether they are a reasonable exercise of the power and discretion of the school authorities." There was an abundance of clear, convincing and unequivocal testimony which supported the action of the District Court in refusing to grant the requested preliminary injunction. We are unable to find an abuse of discretion. [97:754]

Three years elapsed before the next "button" case was decided

by a federal court [119]. The case resulted when seventeen-year-old Thomas Guzick, Jr. wore a button on his clothing on March 11, 1969, with the following words:

> April 5 Chicago
> G.I. Civilian
> Anti-War
> Demonstration
> Student Mobilization Committee

When he appeared at East Cleveland's Shaw High School that day he was asked to remove the button, but refused. As a result, Guzick was suspended from school until such time as he agreed to appear without the emblem. The student then instigated court action to secure a temporary restraining order, a preliminary and permanent injunction, a declaratory judgment, and damages in the amount of $1,000 for every day he was compelled to miss school.

The court record reveals that, with approximately 70 percent of the school's enrollment comprised of black students and with the school having a history of racial strife spanning several decades, school authorities regarded the wearing of buttons, pins, and other emblems by students as sources of additional divisiveness and competition. In fact, such a practice had been uniformly and consistently forbidden at the school for at least forty years, though no official had put the regulation in writing.

In upholding the regulation, the court said that the blanket prohibition of buttons and other insignia at the school under the above conditions was reasonable [119:478]. It distinguished the wearing of buttons from the characteristics of pure speech:

> A button is not merely a statement; it is an identification tag. It identifies the wearer as an adherent or member of one group or class. It identifies him as not being a member of other groups or classes. This identification aspect exists independent of the nature of the message contained in the button. Thus, for example, a button on which appears a mailed black fist certainly identifies the wearer with a particular political persuasion. This is apart from any message sought to be conveyed by the buttons. [119:481]

The court termed free speech "the single most important element upon which this nation has thrived" [119:481], and recognized that it must be protected. However, the court held that in certain situations "free speech or manifestations which are 'closely akin' to free speech, must be exercised with care and restraint; and there

are situations in which the manifestations of speech may even be prohibited altogether" [119:481].

Unlike *Burnside (supra)* and *Tinker (infra)*, officials at the school in this instance *uniformly and consistently* prohibited the wearing of *all* symbols—not merely certain "objectionable" symbols. As in *Blackwell (supra)*, the court viewed the prohibition against all symbols as reasonably related to the prevention of disruptive conduct.

For these reasons, the court denied Guzick injunctive relief and damages.

The first of three "armband" cases adjudicated during the 1960s originated in Des Moines, Iowa, in 1965 and eventually reached the United States Supreme Court [150]. School officials, on learning that students were planning to wear black armbands to school (to express grief for the victims of the Vietnam War), passed a regulation prohibiting such apparel on school premises. When five students later wore armbands to school, they were sent home, though no disturbance had resulted from their action.

Three of the students—John Tinker, Christopher Eckhardt, and Mary Beth Tinker—petitioned a federal district court for an injunction restraining the school administrators and board members from disciplining the students.

The district court in 1966 upheld the school regulation. When the case was appealed, the lower court's decision was affirmed (though by a tie vote).

In 1968, the United States Supreme Court granted *certiorari* and reversed both lower courts by ruling that *nondisruptive* wearing of protest armbands on campus and even in classrooms is protected by the First Amendment. Justices Black and Harlan dissented.

In announcing the majority opinion in February 1969, Mr. Justice Fortas said: "First Amendment rights, applied in light of the special characteristics of the school environment, are available to teachers and students. It can hardly be argued that either students or teachers shed their constitutional rights to freedom of speech or expression at the schoolhouse gate" [150:505].

The following standard for prohibiting a particular expression of opinion was prescribed by the court:

> The State in the person of school officials . . . must be able to show that its action was caused by something more than a mere desire to avoid the discomfort and unpleasantness that always accompany an unpopular viewpoint. [150:508]

The majority held that the wearing of armbands in this instance did not interfere with discipline at the school.

In a dissenting opinion, Mr. Justice Black stated that the majority opinion transfers the power to control pupils from elected state officials to the Supreme Court. Thus, Black wrote, the decision beckons "a new revolutionary era of permissiveness in this country fostered by the judiciary" [150:520]. Adhering to the belief that it "is a myth to say that any person has a constitutional right to say what he pleases, where he pleases, and when he pleases," [150:523] Black maintained that public schools exist so that students may learn, not so that they may have a base for speeches (whether actual or symbolic) regarding politics. Looking to the future, the Justice said, "One does not need to be a prophet . . . to know that after the Court's holding today some students in Iowa schools and indeed in all schools will be ready, able, and willing to defy their teachers on practically all orders" [150:526].

Less than ten months after the *Tinker* decision, a federal district court in Texas was petitioned for a temporary injunction to enjoin officials of the Dallas Independent School District from enforcing an "armband" regulation [115]. At issue was the barring of armbands on or soon after the October 15, 1969, "Moratorium Day." The court record shows the atmosphere in Dallas that day was tense; among other incidents, a bomb threat was reported at one of the schools.

The court interpreted the school district's action as necessary to prevent *possible* disruption or violence that the armbands' appearance might have sparked. Speaking for the court, District Judge Taylor said the school district should not be hindered in enforcing its regulation. Indeed, he stated, students are obligated to obey school regulations designed to promote the orderly process of education [115:552].

The *reasonable* anticipation of disruption was the distinction made between this case and that of *Tinker*.

A third case involving the wearing of armbands was also reported in 1969. The central issue of the case was not the event itself, but whether school officials should be enjoined from placing

notations on school records regarding the event [112]. At commencement exercises at a high school in Pennsylvania, twenty-two seniors wore armbands with the message "Humanize Education." No disorder occurred. School authorities later entered a short letter in each student's file, reporting his part in the event. Civil action was brought by twelve of the students and their parents, who wanted to prevent the communication of such facts to any school, college, university, or employer.

The court held that "school officials have the right and . . . a duty to record and to communicate true factual information about their students . . ." [112:1171]. However, it ruled that "an expression of opinion by students through the medium of armbands in an orderly demonstration is constitutionally protected and cannot be circumscribed" [112:1170].

Written Expression

Unauthorized or underground publications have prompted most of the legal action involving the written expression of precollege students. Estimates of the number of high school underground newspapers in the United States during the 1969-70 school year range from approximately 200 [55:30] to 1,000 [57:35].

Sullivan [85:36-44] terms such publications one of the most overrated threats to existing order. Graves [55:194] maintains that an underground newspaper "is a safety valve where the restless student can let off steam." Nevertheless, administrative opposition to the distribution of non-school-sponsored student publications has spawned four legal disputes since 1968.

For distributing sixty copies of a fourteen-page mimeographed "literary journal" at Illinois' Juliet Central High School, Raymond Scoville and Arthur Breen, both seventeen years old, were (1) barred from their final examinations at the end of the 1967-68 fall semester, (2) restricted from participating on the school's debate team, (3) suspended for the first five days of the spring 1968 term, and (4) expelled for the remainder of the spring semester—more than a month after the incident occurred [142].

The publication in question contained an editorial urging students to reject or destroy "all propaganda that Central's administration publishes" [142:989]. Additionally, the publication attacked the school's attendance regulations and accused the senior dean of having a "sick mind." No disturbance was created by the journal's distribution.

Court action inaugurated on April 17 led to a decision, delivered two months later by District Judge Napoli, in which the students' act was viewed as "an immediate advocacy of, and incitement to, disregard of school administrative procedures."

> Particularly in elementary and secondary schools, the state has a compelling interest in maintaining an atmosphere conducive to an orderly program of classroom learning, and to respect for legitimate and necessary administrative rules. [142:992]

In dismissing the students' action, the court held that "the interest of the state in maintaining the school system outweighs the protection afforded the speaker [in this instance, the writers] by the First Amendment" [142:992].

Three cases pertaining to nonschool publications were reported in 1969. The first resulted when Jeffrey Schwartz distributed approximately thirty copies of the *High School Free Press* at Jamaica High School in New York City on January 24, 1969 [140]. The paper referred to the school principal as "King Louis," "a big liar," and a person with "racist views and attitudes." After requested by the dean of the school to surrender the copies, Schwartz refused. Moreover, he advised another student to disobey the dean. As a result, Schwartz was excluded from classes "for contumelious behavior."

On January 31, a suspension hearing was held, resulting in the recommendation that Schwartz (who needed only a portion of a credit to complete the requirements for a diploma) be graduated on January 31, or be transferred to either of two other high schools in the same district. The student, with the support of his mother, refused to be graduated or to transfer; instead, they applied to a federal district court for a preliminary injunction.

The court announced its decision on March 27. It noted that a distinction exists between high school and college students, with "the former being in a much more adolescent and immature stage of life and less able to screen fact from propaganda." Following that preface, the court denied the application for relief:

> . . . the freedoms of speech and association protected by the First and Fourteenth Amendments are not "absolutes" and are subject to constitutional restrictions for the protection of the social interest in government, order and morality. . . . While there is a certain aura of sacredness attached to the First Amendment, nevertheless these First Amendment rights must be balanced against the duty and obligation of the state to educate students in an orderly and decent manner to protect the rights not of a few but of all of the students in the school system. The line of

> reason must be drawn somewhere in this area of ever expanding permissibility. Gross disrespect and contempt for the officials of an educational institution may be justification not only for suspension but also for expulsion of a student. [140:242]

Six weeks later, in *Vought v. Van Buren Public Schools* [151], a federal court in Michigan delivered a memorandum opinion and order concerning the possession of obscene literature on school property. The following circumstances led to the pronouncement.

On March 13, 1969, David Vought (a sixteen-year-old junior at Belleville High School in Wayne County, Michigan) was found on the school grounds in possession of a four-page publication entitled "White Panther Statement." The principal confiscated the paper and sent the student home until he could return with one of his parents. The next day, Vought appeared at the school with his mother and was reinstated after being told that any student possessing obscene literature at the school in the future would be suspended.

While cleaning out his locker a week later, Vought found a twenty-four-page tabloid newspaper containing certain four-letter words. He inserted the newspaper in his notebook, intending to remove it from school. However, during the school day, either someone took the newspaper from Vought's notebook or he gave it to someone (a point later contested in court). This led to his dismissal, pending action by the board of education.

Both Vought and his mother were told they would be notified of the time, place, and date of the next board meeting. Such was not the case, however, as the board called a special session and, in the absence of the student, his mother, or counsel, decided to expel the student for the remainder of the year. Despite the appearance of an attorney representing the student at a subsequent board meeting, the expulsion was not rescinded. Litigation ensued.

The federal district court upheld the school's regulation concerning obscene materials, but ordered a school board hearing. (Standards prescribed by the court for a hearing are presented later in this paper.) In the hearing, part of the student's defense rested on the fact that the four-letter words contained in the tabloid newspaper were also found in J. D. Salinger's *The Catcher in the Rye*—required or optional reading for ninth- and tenth-grade students at that school—and in an article in the April 1969 issue of *Harper's Magazine*, available to students at the school library.

On June 13, 1969, the federal district court supplemented its memorandum opinion of May 8 by stating, in part:

> Plaintiff's expulsion is not based on the general content of the Argus, or its literary quality or lack of literary quality, or its philosophic bent, or the type of publication it is, but is based solely on its containing certain four-letter words (or variations thereof)—the same words as appear in "The Catcher in the Rye." If we, as a trial court, are confused, what are we to suppose is the state of mind of a student subjected to such a double standard? If the Argus is obscene within the meaning of the school principal's "directive," then surely "The Catcher in the Rye" and the Harper's article must also be obscene. And if the student is invited and/or required to read the latter two, what can the school authorities have in mind in expelling him for possession of the former?
>
> We are compelled to reject the position of the defendants in this case because it is preposterous on its face. It is contrary to any sense of fairness or consistency—a student, placed in the situation in which this school has placed this student, is required to make a judgment that we, as a court, would find difficult to make. [151:1395-1396]

The court then declared the student's expulsion invalid because of "the inconsistency" of the school's obscenity code.

Another case decided by a federal district court in 1969 concerned the publication of an underground newspaper [149].

Sharptown Junior/Senior High School in Houston operated during its first year (1968-69) without written rules and regulations for student conduct. Students, desiring to know the restrictions placed on their conduct by school authorities, aired their grievances at an off-campus rally. Gym instructors at the school interrupted the rally, called certain of the students "Communists" and "Fascists," and later threatened to cut the grades of those participating. An instructor threatened at least one student with physical abuse. Subsequently, some of the students wore small American flags at school to show patriotism, but were told to remove the flags from their clothing.

In another incident, school officials aborted a student fund drive for "the starving people of Biafra," claiming that it violated an unwritten regulation against the solicitation of funds "of any kind" from students during school hours. Yet, when the school itself wanted $500 for the purchase of tropical plants for the school lobby, it solicited twenty-five cents from each student during school hours. A student who refused to contribute to the shrubbery fund was lectured by a teacher who charged that the student's mind was being taken over by Communists.

Dan Sullivan and Mike Fischer, seniors at the school, decided to publish a newspaper voicing their complaints. The paper was printed with the help of a Students for a Democratic Society chapter at the University of Houston, though neither student agreed with the principles of that organization.

The first issue of the paper, dubbed *The Pflashlyte*, set forth the aims and goals of the editors. Without the permission of the editors, the SDS printers included the letters "SDS" at the bottom of the first page. However, before distributing the 125 copies of the paper, the editors cut off that portion of the page.

The second issue, a two-page edition, also contained the letters "SDS," along with "Students for a Democratic Society." This time the printers placed the unauthorized letters and words in the middle of the back page so they could not be cut out without removing print from stories on the first page. Hence, the editors distributed this issue with the SDS additions.

The newspapers were distributed before and after school hours at a park near the school, at a shopping center, and at various other places off the campus. Against instructions from the editors, a few students distributed copies on school property. When copies appeared in various classes during school hours, teachers took these from the students. Some congestion in the hallways during class changes allegedly resulted from the circulation of *The Pflashlyte.*

After two or three days of investigation, the principal and other school administrators suspected Sullivan and Fischer's involvement in the underground newspaper affair. Both students readily admitted their action when questioned. They were told such an action violated "school regulations," particularly in view of their involvement in a "secret organization." Five days later, Fischer was expelled from school for the remainder of the year; the following day, Sullivan was likewise expelled. After trying unsuccessfully to gain admission to other high schools in the district, the students sought an injunction from a federal district court.

In announcing its memorandum opinion, the court, speaking through District Judge Seals, held that, while students do not have a right to read newspapers during class periods, they are protected by the First Amendment in exercising their freedom of speech (including, in the court's words, the "publication and distribution of newspapers"), "so long as it does not unreasonably interfere

with normal school activities" [149:1340]. The court stated that administrators could properly regulate the time and place for distributing papers within the school building. However, as long as a student complies with these rules, no administrative restraint should be imposed, even "if other students, who are lacking in self-control, tend to overreact thereby becoming a disruptive influence" [149:1340]. Did the distribution of *The Pflashlyte* substantially and materially interfere with the operation of Sharptown Junior/Senior High School? The court concluded that it had not.

As to the contents of the newspaper, the court observed:

> *The Pflashlyte* was primarily intended as a discussion and comment upon problems affecting student-administrator relations. . . . The writers are generally critical of school policy but the criticism is on a mature and intelligent level. In the introductory issue, it is argued that improvement in the students' relationship with school administrators can be accomplished only through the "sincere cooperation of all factions." "Confrontation," it is stated, "would result in regression rather than progression." These are not the words of one who is calculating to "incite insubordination." [149:1341]

Hence, the court ruled for the students, stating that "in the absence of precise and narrowly drawn regulations," students may "distribute or otherwise engage in the publication of newspapers either on or off school premises during either school hours or nonschool hours unless such activities materially and substantially disrupt the normal operations of the school" [149:1346].

Still another 1969 case involved an officially sponsored school newspaper [133]. The decision was announced on May 15 by Judge Metzner of a federal district court in New York. At issue was the right of high school students to publish in their school newspaper an advertisement opposing the Vietnam War. Although approved for publication by the student editorial board, the advertisement was halted by the school principal. He maintained that the war was not a school-related activity and therefore did not qualify for news, editorial, or advertising space. Yet, in the litigation that followed, past issues of the school newspaper were shown to contain several articles pertaining to nonschool matters (draft board procedures, graduate draft deferments, student views on national political candidates and the Vietnam War, school fundraising activities for Biafra, etc.).

The Ad Hoc Student Committee against the War in Vietnam, whose advertisement was prohibited, maintained that their free-

dom of speech had been abridged. The court agreed. "There is no logical reason to permit news stories on the subject and preclude student advertising," said the court, adding:

> The school paper appears to have been open to free expression of ideas in the news and editorial columns as well as in letters to the editor. It is patently unfair in light of the free speech doctrine to close to the students the forum which they deem effective to present their ideas. [153:105]

In a footnote, the court further stated: "The argument that alternative modes of expression exist—for instance, conversations or armbands—thus permitting suppression of the chosen mode, is without merit and has been consistently disregarded by the courts" [153:105].

Granting relief to the students, the court observed:

> This lawsuit arises at a time when many in the educational community oppose the tactics of the young in securing a political voice. It would be both incongruous and dangerous for this court to hold that students who wish to express their views on matters intimately related to them, through traditionally accepted nondisruptive modes of communication, may be precluded from doing so by that same adult community. [153:105]

Freedom of Association

Freedom of association, as interpreted by Ackerly and the ACLU, is the freedom of students to form extracurricular organizations for the purpose of enriching their education. Ackerly proposes the following guidelines for the creation and operation of such organizations:

1. Before it can be recognized as a school group and be given use of school time and facilities, the club must be approved, in accordance with established criteria, by the principal or some other school official.
2. Membership must be open to *all* students except where the purpose of the club requires qualifications (a French club, for instance).
3. The club must have a faculty sponsor or adviser selected and approved according to agreed-upon procedures, and club activities will not be permitted until a faculty sponsor has been selected.
4. Clearly improper purposes and activities are not permitted and if persisted in will be cause for withdrawing official approval of the group.
5. School groups, either continuing or *ad hoc*, are not permitted to use the school name in participating in public demonstrations or other activities outside the school unless prior permission has been granted by the designated school official. [2:13]

The ACLU advances similar standards [8:14-15].

Both position papers maintain that, in the face of real or threatened interference with the educational process or the health or

safety of the students, school authorities may temporarily impose limitations on the activities of a school organization. Before an organization is permanently banned from the school, however, it should receive a full hearing.

In the 1960s, three cases related wholly to extracurricular activities. Several others concerned the rights of married students to participate in school functions, including extracurricular activities. These, with the exception of *Marino v. Waters* [128], are treated later in "Right to Due Process."

The *Marino* case arose with the summer 1968 marriage of Gino Marino, who, while living with his parents the previous school year, had attended a parochial school. Prohibited from attending the parochial school after his marriage, Marino moved with his wife to an apartment in the Robert E. Lee High School district. This move constituted a transfer, since Marino had previously resided in the Baton Rouge High School district.

According to a regulation of the Louisiana High School Athletic Association, a student who transfers from one school to another in the same district is ineligible for athletics for one year; a student is prohibited from participating in athletics in any other school or district unless his parents made a *bona fide* move.

The association appointed a panel of three principals to investigate Marino's move. The panel found that, according to the association rules, Marino was ineligible to play football at Lee High School. Marino appealed this decision to the association's executive committee, but this body upheld the panel's finding. The case was then taken to the district court, which granted an injunction prohibiting the association from enforcing its ruling.

The association appealed the decision to the Louisiana Court of Appeal for the First Circuit. On March 10, 1969, the appellate court reversed the district court's decision. The appellate court stated:

> . . . participation in interscholastic athletics *is not a property right at all, but is a privilege* which the school, or a voluntary association whose rules a school agrees to follow, may withdraw if the student fails to qualify for the privilege. There is of course the limitation that schools may not arbitrarily allow the privilege to some and not to others. But it is clearly not arbitrary for a school, or an association of schools, to establish rules based on rational reasons and to apply these rules uniformly. [128:806] [Emphasis added]

Most litigation concerning students' freedom of association in extracurricular activities has involved high school fraternities and sororities. As noted by Bolmeier [14:211-214], six of seven such cases decided before 1960 resulted in judicial approval of school regulations prohibiting fraternities or sororities. Such organizations continued to demand judicial review in the 1960s, resulting in decisions in Ohio, California, and Texas.

The Ohio case [121] resulted from the Columbus Board of Education's enforcement of a regulation that prohibited high school students who belonged to certain off-campus social clubs from participating in some extracurricular activities. The high school, enrolling 1,900 students, had had a long history of fraternal societies. Although banned from the school itself, the societies continued to hold their meetings off campus in the homes of parents. In trying to enforce the rule against these societies, the board was challenged by the students and their parents, who contested the board's authority to regulate student activities off campus. Ohio's Court of Appeals upheld the board's regulation.

Four years later, a similar case was recorded in California [139]. In this instance, students formed the Manana Club, an off-campus social organization that limited its membership to students enrolled in the public schools of Sacramento. Declaring such an organization to be in violation of school policies, the governing board upheld disciplinary measures taken against the students. When brought before the Sacramento County Superior Court, the action of the school board was ruled unconstitutional. However, the District Court of Appeal reversed this decision and stated:

> Here the school board is not dealing with adults but with adolescents in their formative years. And it is not dealing with activities which occur only within the home and which, therefore, might be said to relate exclusively to parental jurisdiction and control. It is dealing under express statutory mandate with *activities which reach into the school and which* reasonably may be said to *interfere with the educational process*, with the morale of high school student bodies as a whole and which may also reasonably be said not to foster democracy (as the Manana constitution preaches) but to frustrate democracy (as the Manana Club by its admitted activities practices). [139:790] [Emphasis added]

The Texas case followed the adoption by the Fort Worth school board in November 1966 of a rule that required the parents of each student entering the district's junior and senior high schools the following autumn to sign a form certifying that the student was not a member of a fraternity, sorority, or secret society, and that the student would not become a member of such while enrolled in

the district's schools [135]. The parents of Janie Passel applied for a declaratory judgment on the constitutional validity of such a rule. Justice Langdon of the Court of Civil Appeals observed that courts generally have approved the authority of school administrators to forbid fraternities, sororities, or other secret societies. Seeing nothing in this instance to justify departing from this judicial stance, the court affirmed a lower court's decision that had denied an injunction against the school board. Later this decision was reversed by a higher court.

Freedom of Dress and Appearance

Personal appearance has been a concern of mankind in all ages. On this continent alone, the length of young men's hair has been an issue at least since 1649—the year the magistrates of Portsmouth issued the following proclamation:

> For as much as the wearing of long hair, after the manner of ruffians and barbarous Indians, has begun to invade New England, we, the magistrates, do declare and manifest our dislike and detestation against the wearing of such long hair, as against a thing uncivil and unmanly, whereby men do deform themselves and do corrupt good manners.
> We do, therefore, earnestly entreat all elders of this jurisdiction to manifest their zeal against it, that such as shall prove obstinate and will not reform themselves, may have God and man to witness against them. [33:4]

Twentieth-century school officials, no less than seventeenth-century magistrates, consider personal appearance a matter of great importance. School officials generally regard dress and appearance regulations as essential for maintaining an educational atmosphere free of distraction or hazard to students. Students generally regard such regulations as an encroachment on their personal freedoms. Consequently, one of the most active areas of litigation in the last decade has been the enforcement of school dress and appearance regulations.

"Education is too important to be granted or denied on the basis of standards of personal appearance," avers the ACLU [8:9]. Personal appearance, according to the ACLU, is a form of self-expression and should be protected along with other student liberties.

Ackerly, on the other hand, describes general guidelines for justifiable regulations:

> A reasonable regulation concerning dress, hair style, and cleanliness will stress that such regulation is vital not only to the individual student but also to those with whom he shares a classroom or locker. Students should not wear clothing or hair styles that can be hazardous to them in their

school activities such as shop, lab work, physical education, and art. Grooming and dress which prevent the student from doing his best work because of blocked vision or restricted movement should be discouraged as should be dress styles that create, or are likely to create, a disruption of classroom order. Articles of clothing that cause excessive maintenance problems—for example, cleats on boots, shoes that scratch floors, and trousers with metal rivets that scratch furniture—can be ruled unacceptable. [2:9-10]

From 1960 to 1970, twelve cases relating to the appearance of public school students were recorded by the courts. Two involved clothing; one, the wearing of a beard; and nine, the length of hair.

Clothing

One case pertained to the wearing of a prescribed uniform for a physical education class. The case, *Mitchell v. McCall* [129], was ultimately decided by the Alabama Supreme Court. It followed Eulene Mitchell's suspension from Vigor High School (Mobile County) for refusing to participate in the physical education program. She and her father felt that the gym suits prescribed for the class were immodest, as were the exercises performed in class. Although school officials agreed to allow the girl to attend the class without dressing in the prescribed attire and without performing various exercises involved in the course, her father would not let her attend the class at all. He requested that a special class be created for her and other students who shared her beliefs.

The state supreme court ruled that the student's constitutional rights had not been infringed, and that, although she could not be required to wear the class uniform or perform the exercises that seemed immodest to her, she was obligated to attend the class. The decision was announced on July 26, 1962.

Justice Meyer of the Nassau County (New York) Supreme Court, on November 18, 1969, announced the decision in *Scott v. Board of Education* [141], concerning a school board's power to proscribe the wearing of slacks in school by female students. The case arose after Lori Scott, a fifteen-year-old sophomore at Hicksville High School, twice wore slacks to school in violation of the school board's dress code. Besides attacking the legality of the board's policy, she contended that her family was not financially able to buy "appropriate" clothing for her. She appealed to the courts to enjoin the board from enforcing the dress code and from placing her in detention, and to direct the board to revoke the dress code.

The court held that "Board regulation of dress is valid only to the extent necessary to protect the safety of the wearer, male or

female, or to control disturbance or distraction which interferes with the education of other students" [141:603].

Examples of justifiable dress code regulations, according to the court, are as follows: "A regulation against the wearing of bell-bottomed slacks by students, male or female, who ride bicycles to school . . . [:] a regulation against slacks that are so skintight and, therefore, revealing as to provoke or distract students of the opposite sex, and . . . [:] a regulation against slacks to the bottoms of which small bells have been attached . . ." [141:606]. The court explained, "Such regulations are valid because they relate the prohibition to an area within the Board's authorized concerns; the flat prohibition of all slacks is invalid precisely because it does not . . ." [141:606].

Beards

The beard case grew out of Kevin Akin's refusal to shave in accordance with a physical appearance regulation at Polytechnic High School in Riverside, California [93]. Denied admission to the school in 1965, Akin attended a private school during the 1965-66 school year and again sought admission to Polytechnic High School in the autumn of 1966. Following the second denial of his admission, he sought a writ of mandate to prevent the school from predicating its enrollment on a clean-shaven appearance.

School officials testified that the wearing of beards by other students at the school in the past had resulted in disruptions. Both the Superior Court of Riverside and the California Court of Appeal agreed that the regulation prohibiting beards was valid. In announcing the Court of Appeal's decision in 1968, Acting Presiding Judge Kerrigan stated:

> The parents of the majority of male students who are clean-shaven enjoy the right to have their youngsters educated in a classroom setting free of disturbance and distractions. Expert opinion established that it is injurious to the educational process when a deviation on the part of one student leads to the lack of acceptance on the part of many students. Good study habits and proper conduct on the part of youngsters constitute attributes which are beneficial to the general public and far outweigh the restraint on the peripheral right to grow a beard. [93:562]

Hair

Consternation over the length and style of hair for male students produced nine cases in the 1960s, the first being *Leonard v. School Committee of Attleboro* in 1965 [126]. Seventeen-year-old George Leonard, Jr., a professional musician, was informed by the prin-

cipal of Attleboro High School (Massachusetts) on September 11, 1964, that he would have to cut his hair in accordance with "school standards" before he could continue attending the school. Leonard and his parents requested a hearing before the School Committee, which was held on September 21. By a split vote, the committee sustained the principal's action.

Leonard then sought a bill in equity to restrain the School Committee, the superintendent, and the principal from preventing his attendance at the school. He argued that the rule was invalid because it had not been formally adopted and publicized. The court, however, was not impressed with this argument. Said Justice Spalding: "We hold that the principal's verbal directive, followed immediately by a letter and later by the ratification of the school committee, satisfies any procedural requirements exacted by statute or by consideration of due process" [126:472]. To the contention that a regulation barring a student from school solely because of the way he wears his hair is unreasonable and arbitrary, the court responded, "We will not pass upon the wisdom or desirability of a school regulation. . . . Here . . . we need only perceive some rational basis for the rule requiring acceptable haircuts in order to sustain its validity. Conversely, only if convinced that the regulation of pupils' hair styles and lengths could have no reasonable connection with the successful operation of a public school could we hold otherwise" [126:472].

Agreeing with school officials that Leonard's hairstyle was disruptive to the school, the court stated: "The rights of other students, and the interest of teachers, administrators, and the community at large . . . are paramount" [126:473].

A Louisiana student who was dismissed from school in September 1966 because of long hair based his plea for a preliminary injunction on the First, Eighth, and Ninth Amendments [110]. Under the First Amendment, the student claimed that wearing long hair is protected as a freedom of expression. The federal district court disagreed, holding that long hair *per se* does not represent a particular idea, and thus, unlike freedom buttons or flag saluting, is not symbolic expression. To the student's argument that having to cut his hair before being readmitted to school constituted "cruel and unusual punishment" prohibited by the Eighth Amendment, the court said, "[This argument] is wholly without merit" [110:529]. Likewise, the court viewed the Ninth Amendment ("The enumeration in the Constitution, of certain rights, shall not be construed to

deny or disparage others retained by the people") as irrelevant in this case since the right of free choice of grooming is not a fundamental right. The requested injunction was denied.

Meanwhile in Texas, Phillip Ferrel, Stephen Webb, and Paul Jarvis were involved in a hair case after being denied admission to W. W. Samuell High School in Dallas on September 7, 1966 [115]. As members of a musical group, the three students wore "Beatle" hairstyles. The principal contended that the boys' appearance "caused trouble and commotion; . . . frequently caused the exchange of obscene remarks to the long-haired boys; and attracted attention and was disruptive in the classroom . . ." [115:547]. The central issue in the case, as in the preceding one, was whether the students had been deprived of any rights guaranteed by the Constitution.

The federal district court ruled that no such deprivation had been incurred. "It is inconceivable," said the court, "that a school administrator could operate his school successfully if required by the courts to follow the dictates of the students as to what their appearance shall be, what they shall wear, what hours they will attend, etc." [115:552].

A wave of hair tests hit the courts in 1969, with no less than six cases reported by year's end. First among these was the February 10, 1969, decision of *Myers v. Arcata Union High School* [132], a writ of mandamus proceeding in California. Gregor Myers, fifteen years old in 1966, was suspended from Arcata High School on October 19 of that year because of the length of his hair. When entered in the Superior Court of Humboldt County, the case was decided for the student. The school district appealed the case to the District Court of Appeals, which, by a split vote, affirmed the lower decision to grant writ. Justice Rattigan of the higher court noted that the wearing of long hair is an expression of personality and comes under the protection of the First Amendment. "Adulthood," said Justice Rattigan for the majority, "is not a prerequisite: The state and its educational agencies must heed the constitutional rights of all persons, including schoolboys" [132:557].

The court recognized the right of a school board to prohibit the wearing of long hair "where there is empirical evidence that . . . such has a disruptive effect within a school" [132:558]. However, in this instance the majority viewed the regulation banning "extremes of hair style" as unconstitutional on the basis of vagueness. The court noted, "whether a given style is 'extreme' or not is a

matter of opinion, and the definitive opinion here rested in the sole —and neither controlled nor guided—judgment of a single school official" [132:559].

In a dissenting opinion, Judge Christian questioned the view that the regulation was vague.

> Must a school specify in a written regulation the minimum allowable frequency of baths before a teacher may require a student to be clean? What kind of specific regulation is required to enable teachers to restrain disruptive speech in classrooms or movement in passageways? All these matters may lawfully be left to adjustment and reasonable control by teachers acting informally. It would needlessly disable our schools to force the handling of such problems into a mold of rule and regulation. So long as the teacher acts reasonably the Constitution does not require him to work in an atmosphere of litigious contest with any sea-lawyer who may appear in his class. [132:565]

A Wisconsin school board adopted the following regulation during the 1967-68 school year:

> Hair should be washed, combed and worn so it does not hang below the collar line in the back, over the ears on the side and must be above the eyebrows. Boys should be clean shaven; long sideburns are out. [100:703]

At the opening of the 1968-69 school year at Williams Bay High School, two students, Thomas Breen and James Anton, were expelled from school for allowing their hair to exceed the above standard. State Superintendent of Public Instruction William C. Kahl reviewed the students' expulsion and decided that the action against Breen was justified. The case of Anton, who had cut his hair and been readmitted to school before the state superintendent's review, was considered moot.

Breen brought suit in the federal district court, where he claimed that the board's regulation violated the Constitution.

As noted by the court, the board failed to show either that substantial distraction was caused by students who exceeded the hair standard or that students who wore their hair in more conventional styles performed better in school. Consequently, the court declared the board's action unjustified. Judge Doyle stated for the court that any reluctance on its part "to avoid judicial involvement in serious constitutional issues merely because they concern young people . . . is neither prudent, expedient, or just. It is time to broaden the constitutional community by including within its protections younger people whose claim to dignity matches that of their elders" [100:708].

The third court decision of 1969 regarding hair was adjudicated in a federal district court in Alabama [118]. The following events preceded court action.

Bobby Griffin, a seventeen-year-old eleventh-grade student, was suspended from from Wetumpka High School on April 15, 1969, because the length and style of his hair did not conform to the following regulation adopted by the Elmore County Board of Education during the 1967-68 school year: "Hair must be trimmed and well cut. No Beatle haircuts, long sideburns, ducktails, etc., will be permitted" [118:61]. During the 1968-69 school year, school authorities clarified the regulation by stating that sideburns could be no longer than the middle of the ear; that hair in front could be no longer than one inch above the eyebrows; and that the hairline in back must be shingled or tapered—not blocked—and must be above the collar. Officials maintained that the regulation was necessary to prevent the distracting practice of passing combs in class and to prevent boys from being tardy because of combing their hair.

Following his suspension, Griffin sought a district court injunction restraining school authorities from taking action against him because of the length of his hair, which was blocked in back, but otherwise met the school's regulations.

The school principal testified that his authority might be undermined if the court ruled the haircut regulation unconstitutional. To this the court answered:

> Such an argument can be applied to any school rule . . . and, if accepted, would eliminate all student rights. . . . This Court must adjudicate claims of infringement of the Constitution; it does not, of course, create the controversies from which they arise. In this case, it was the school officials who created . . . [this situation] and it is they who must accept responsibility for the consequences. [118:63]

In ordering the student's readmission and in granting the injunction, the court recognized as a Constitutional freedom the right of each person to determine his own hairstyle and personal appearance. The court viewed the school regulation as arbitrary and unreasonable—one that "clearly violates the equal protection clause of the Fourteenth Amendment to the Constitution . . ." [118:62].

> . . . the freedom here protected is the right to some breathing space for the individual into which the government may not intrude without carrying a substantial burden of justification. Thus, one may not have the right to walk nude down the median strip of a busy highway. But, *until one's ap-*

pearance carries with it a substantial risk of harm to others, it should be dictated by one's own taste or lack of it. [118:62] [Emphasis added]

An Indiana school board regulation worded similar to the Elmore County regulation led to a federal district court decision in September 1969 [109]. Tyler Crews was denied admission to North Central High School in Indianapolis when the 1968-69 school year began and again in late spring 1969.

In subsequent court action, Crews was described as having at the pretrial conference (September 2, 1969) "hair [that] was parted in the middle and hung several inches below the shoulders in back and on the chest in front, in what would normally be described as feminine in style" [109:1372]. The court estimated at the trial that the student had not had a haircut in twenty months.

In ruling for the school board, the court stated:

> . . . conduct which has the effect of bringing about disruption, whether intending that effect or not, may constitutionally be proscribed within reason. . . . [109:1372]
>
> . . . where the conduct involved is wearing long hair, which is rather far removed from 'pure speech,' the Constitution permits reasonable regulations on a showing of classwork disruption. . . .
>
> Even though plaintiff's conduct here is assumed to be constitutionally protected, still the defendants' enforcement of the long hair regulation is so directly related to the furtherance of a vital and important state interest, that of the maintenance of a peaceful forum for the educational function, that this Court finds no violation of equal protection rights. [109:1376]

Less than a week later, a federal district court in Massachusetts ordered the reinstatement of seventeen-year-old Robert Richards, Jr. as a student at Marlboro High School, from which he had been suspended for wearing a "Beatle" style haircut [138:433]. Further, the court directed officials to remove from school records any notation regarding Richards' suspension and absences subsequent to the school's action, and enjoined the school principal from suspending or disciplining the student because of his hairstyle. Costs incurred by the student, the court added, should be refunded.

In announcing its decision, the court declared: "No factual foundation has been offered to show that plaintiff's hairstyle involves a health or sanitary risk to him or to others, or will interfere with plaintiff's or with others' performance of their school work, or will create disciplinary problems of a kind reasonably thought to be a concern of public officials " [138:451].

The federal district court for northern California endorsed the *Richards* decision in *Olff v. East Side Union High School District*

[133]. The school district had adopted the following regulation:

> Hair shall be trim and clean. A boy's hair shall not fall below the eyes in front and shall not cover the ears, and it shall not extend below the collar in back. [133:558]

Although the court recognized the right of school authorities to adopt and enforce regulations designed to insure the health and safety of students, it regarded this regulation as overly broad since it lacked specific standards. The court declared the regulation unconstitutional and awarded injunctive and declaratory relief to the plaintiff, fifteen-year-old Robert Olff, who was readmitted to his San Jose school.

Freedom from Religion

The "Establishment Clause" of the First Amendment ("Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof . . .") has served as an impregnable wall between church and state. For more than a century, however, numerous issues in public education have tested the strength of that wall: school prayers, Bible reading, sectarian holidays, the use of school facilities for religious instruction, released time for religious instruction, expenditure of public funds for parochial textbooks, and conscientious objections to certain school practices (such as saluting a flag) [14:47-55].

The ACLU upholds teaching *about* religion (for example, the meaning of certain religious holidays), but admonishes schools from fostering a religious view in the classroom. Holding that students have "the right to practice their own religion or no religion," the ACLU asserts that "any federal, state, or local law or practice is unconstitutional if it has the effect of extending to religion the mantle of public sponsorship, either through declaration of public policy or use of public funds or facilities" [8:13].

Three students' rights cases from the 1960s directly relate to religion and the public schools. The *Engel* case [113] in 1962 tested the constitutionality of a prescribed prayer that students in New York were required to recite verbally in the presence of a teacher at the beginning of each school day. The prayer read: "Almighty God, we acknowledge our dependence upon Thee, and we beg Thy blessings upon us, our parents, our teachers and our country" [113:422].

Parents of ten pupils in the Union Free School District Number 9 (New Hyde Park) brought action in a state court, insisting that

the required prayer was contrary to the beliefs, religions, or religious practices of both themselves and their children. The New York Court of Appeals sustained a lower court's ruling upholding the prayer so long as the schools did not compel any pupil to join in the prayer over his or his parents' objection [113:423]. However, the United States Supreme Court reversed and remanded the judgment of the Court of Appeals by announcing, on June 25, 1962:

> In this country it is no part of the business of government to compose official prayers for any group of the American people to recite as a part of a religious program carried on by government. . . .
> The First Amendment was added to the Constitution to stand as a guarantee that neither the power nor the prestige of the Federal Government would be used to control, support or influence the kinds of prayer the American people can say. . . . Under that Amendment's prohibition against governmental establishment of religion, as reinforced by the provisions of the Fourteenth Amendment, government in this country, be it state or federal, is without power to prescribe by law any particular form of prayer which is to be used as an official prayer in carrying on any program of governmentally sponsored religious activity. [113:425, 429-430]

The following June the Supreme Court reviewed two Bible-reading cases together [91, 131]. The *Abington* case [91] arose from opposition to a Pennsylvania requirement that at least ten Bible verses be read without comment at the beginning of each school day. This requirement the Court viewed as unconstitutional. In affirming the lower court's decision, the Court said:

> The place of religion in our society is an exalted one, achieved through a long tradition of reliance on the home, the church, and the inviolable citadel of the individual heart and mind. We have come to recognize through bitter experience that it is not within the power of government to invade the citadel, whether its purpose or effect be to aid or oppose, to advance or to retard. [91:226]

The *Murray* case [131] was a challenge to a 1905 regulation of the Baltimore City Schools that provided for the reading of a chapter in the Bible and/or the reciting of the Lord's Prayer at the beginning of each school day. Although the rule had been amended to permit a student to be excused from religious exercises on the request of his parents, William T. Murray and his mother Madalyn, both professed atheists, opposed the rule on First and Fourteenth Amendment grounds. The Supreme Court, reversing the decision of a lower court, held that the rule was unconstitutional.

Freedom from Discrimination

"No student should be granted any preference nor denied any privilege or right in any aspect of school because of race, religion,

color, national origin, or any other reason not related to his individual capabilities," states the ACLU [8:19]. "It is the duty of the administration to prevent discrimination and to avoid situations which may lead to discrimination or the appearance thereof, in all aspects of school life, including the classroom, the lunchroom, the assembly, honors, disciplinary systems, athletics, clubs and social activities" [8:19].

In the aftermath of the 1954 *Brown v. Board of Education of Topeka* decision [101], litigation involving discrimination against minorities spilled over into the 1960s, as confusion apparently persisted over the intent of the *Brown* decree. Were school systems obligated to integrate their schools? Or were they merely obligated to desegregate their schools?

Facing this issue was a case from Indiana [96], decided on January 29, 1963, in which Rachel Lynn Bell (and other students) claimed the Gary school system was guilty of perpetrating segregation because of its large number of completely or predominantly Negro schools. A federal district court, to which the students had turned for a declaratory judgment, ruled that a segregated school is "a school which a given student would be otherwise eligible to attend, except for his race or color, or, a school which a student is compelled to attend because of his race or color" [96:829]. Noting that the plaintiffs had offered no proof of deliberate or purposeful segregation, the court said: "The fact that certain schools are completely or predominantly negro does not mean that the defendant maintains a segregated school system" [96:828]. In other words, schools that, because of neighborhood residential patterns, happened to be comprised mostly or totally of minority students were not segregated *per se*. In announcing its decision, the court noted that the Supreme Court took this same view in the *Brown* decision with reference to Topeka's school plan.

Later that year the Supreme Court of California ruled on a *de facto* segregation case resulting from the gerrymandering of the Pasadena city school district [124]. Jay R. Jackson, Jr., a thirteen-year-old Negro student, was assigned to a school attended mostly by Negroes and other minority students. He attempted to transfer to another school, closer to his home, that had substantially fewer minority students, but his request was denied by school authorities.

The court, in the words of Chief Justice Gibson, announced:

> The constitutional rights of children not to be discriminated against in school admission on the grounds of race or color cannot be nullified by

> state action either openly and directly or indirectly by evasive schemes for segregation, and the Fourteenth Amendment is violated where zoning is merely a subterfuge for producing or perpetuating racial segregation in a school. [124:881]

The court held that, even if a few white students were enrolled in a predominantly Negro school or if a few Negro students were enrolled in a predominantly white school, improper discrimination still could be declared to exist [124:881].

In a series of actions designed ultimately to circumvent the *Brown* decision, the state of Virginia (1) amended its constitution to provide public funds for schools other than those owned by the state, (2) enacted legislation that provided for the closing of integrated schools and the subsidizing of private schools, and (3) repealed its compulsory attendance law [117]. Litigation began in 1951 and thirteen years later reached the United States Supreme Court. Speaking for the Court, Mr. Justice Black said:

> The record in the present case could not be clearer that Prince Edward's public schools were closed and private schools operated in their place with state and county assistance, for one reason, and one reason only: to ensure through measures taken by the county and the State that white and colored children in Prince Edward County would not, under any circumstances, go to the same school. Whatever nonracial grounds might support a State's allowing a county to abandon public schools, the object must be a constitutional one, and grounds of race and opposition to desegregation do not qualify as constitutional. [117:231]

The Court ordered that the students in this proceeding be provided the kind of education offered in the public schools of Virginia. "The time for mere 'deliberate speed' has run out," said the court.

Three years after this decision, a federal district court in Washington, D.C., heard the case of *Hobson v. Hansen* [120]. The court ruled that poor Negro children are entitled to the same educational opportunities as affluent white children. The Washington, D.C., school system, the object of the litigation, was ordered to abolish the track system and optional zones, to integrate its faculties, and to transport from overcrowded schools any students who volunteered to attend underpopulated schools. "[R]acially and socially homogeneous schools damage the mind and spirit of all children who attend them . . . and block the attainment of the broader goals of democratic education, whether the segregation occurs by law or by fact," said Circuit Judge Wright for the court.

Freedom from Unauthorized Searches

Knowles defines a search as "an action by a public official compelling the production of non-verbal material or information from the possession of another against his will" [58:152-153]. To what extent may school officials legally compel students to produce such material? Although not law, the ACLU statement claims that only upon the showing of a warrant, supported by oath or affirmation and describing the objects to be seized, may a student's locker be legally searched—unless the student voluntarily agrees to the search [8:17]. The ACLU recognizes the right of law officers to pursue violators of the law even on school grounds or in school facilities. "Whenever the police are involved in the schools," the statement reads,

> . . . their activities should not consist of harassment or intimidation. If a student is to be questioned by the police, it is the responsibility of the school administrator to see that the interrogation takes place privately in the office of a school official, in the presence of the principal or his representative. Every effort should be made to give a parent the opportunity to be present. All procedural safeguards prescribed by law must be strictly observed. When the interrogation takes place in school, as elsewhere, the student is entitled to be advised of his rights, which should include the right to counsel and the right to remain silent. [8-19]

Ackerly extends these standards to students' desks, and adds:

> Where drugs or weapons are suspected, the police should be contacted and the search conducted in keeping with accepted police procedures and with the principal or a designated faculty member present. A complete report on such an incident should be prepared promptly, checked with witnesses and the student or students involved, and a copy filed with the superintendent of schools and the board of education. [2:12]

Knowles warns that an illegal search could result in a libel suit against the school official or teacher who conducted the search, and possibly in the eventual dismissal of the official or teacher. Evidence or contraband found in such a search, he notes, may not be used in a state or federal criminal proceeding against the student [58:158].

As for elementary school children, Knowles states that school authorities have a wider latitude of search-power because (1) parental consent is implied, (2) the school has a responsibility to protect children from others (for example, if a child is suspected of having articles potentially dangerous to himself and others), and (3) children have not reached the age of criminal responsibility [58:155].

If secondary school officials suspect students of possessing dangerous articles, Knowles advises the officials to dismiss or isolate the suspects from the rest of the student body unless they voluntarily consent to a search [58:165].

Two cases—both reported in 1969—relate to searches of high school students. The first took place at Mount Vernon (New York) High School [134]. Three detectives from the Mount Vernon Police Department obtained a warrant directing the search of two students and their lockers. Upon being shown the warrant, the school's vice-principal called the two students to his office. The detectives searched the students for marijuana, but found nothing.

One of the students, in the absence of the other, was asked by a detective if marijuana was being kept in his locker. The student replied either "I guess so" or "Maybe." The detective and the student, accompanied by the vice-principal and a custodian, went to the student's locker where the vice-principal opened the locker and the detective found marijuana cigarettes in the student's jacket. Later, attorneys for the student argued that the vice-principal had no authority to consent to the locker search, and furthermore, that the locker was the private property of the student.

On April 23, the New York Court of Appeals ruled that since the police presented the school official with a search warrant, he was authorized to allow the search, and, moreover, that the student's locker was not private property. Hence, the court sustained the denial of the motion to suppress the evidence.

The second case [148] was decided by the Supreme Court of Kansas on June 14. The preceding January, a music store in Ottawa was broken into and more than $200 in cash, several silver coins (including Kennedy half-dollars and a 1798 silver dollar), three revolvers, and keys were stolen. The day following the burglary, two policemen visited the principal of Ottawa High School and asked to see one of the students, Madison Stein. The principal called Stein to his office and shortly thereafter, with Stein's consent, opened the student's locker and brought its contents to his office. When the student allowed officers to search his belongings, they found a key in the bottom of a pack of cigarettes. Later they determined that the key was one to a locker at a bus station. Having obtained a search warrant, the officers found in the locker "a considerable amount of cash and currency," several Kennedy half-dollars, a 1798 silver dollar, other coins, keys, and a paper sack with the name of the burglarized store printed on it.

In subsequent court action, the student's attorney argued that the evidence was inadmissible since the student was not warned of his right to remain silent and his right to counsel before the search of his locker. A lower court rejected this argument, as did the state supreme court, which, with regard to the status of a school locker, said:

> Its status in the law is somewhat anomalous: it does not possess all the attributes of a dwelling, a motor vehicle, or a private locker. . . .
>
> Although a student may have control of his school locker as against fellow students, his possession is not exclusive against the school and its officials. A school does not supply its students with lockers for illicit use in harboring pilfered property or harmful substances. We deem it a proper function of school authorities to inspect the lockers under their control and to prevent their use in illicit ways or for illegal purposes. We believe this right of inspection is inherent in the authority vested in school administrators and that the same must be retained and exercised in the management of our schools if their educational functions are to be maintained and the welfare of the student bodies preserved. [148:3]

Freedom to Learn

The freedom of students to learn and the freedom of teachers to teach constitute the heart of academic freedom. Increasingly students are pressuring teachers and administrators to make education more relevant. Clark writes:

> The basic desire of students is to deal in analogies with the real world and its problems. In such a setting, the experience of ancient Greek cities *does* become important to students. The French and American Revolutions *do* provide useful illustrations, the experiences of other people and other cultures *do* shed light on the world of the street. When related to reality, students can see the value of many subjects often considered useless and dull. [24:2]

Public schools as a whole have been slow to change, as noted in a recent article from *Newsweek*:

> [M]ost U.S. high schools have not kept up with the society they exist to serve. Learning remains more a mechanical than a personal experience; for the most part, curriculums today are what they were twenty years ago; and students are still expected to remain passive receptacles for knowledge, which they are instructed to gain by listening, taking notes, memorizing facts. [88:65]

With the exception of a statement in the ACLU document advocating the adoption of written policies for selecting and purchasing class and library materials [8:10-11], nothing appears in either the ACLU or the Ackerly paper on curricular matters.

Although courts of earlier decades have ruled on such matters as the teaching of foreign languages, the teaching of dancing in physical education classes, and the teaching of evolution [14:227-230], few challenges to curricular offerings are seen in case law. Only twice in the past decade was public school curriculum an issue of litigation.

In 1963, driver training was challenged in an Illinois school system, but the instruction was held valid by a state court [92].

In 1968, the United States Supreme Court, in *Epperson v. Arkansas* [114], struck down a 1928 Arkansas statute that had made it unlawful "to teach the theory or doctrine that mankind ascended or descended from a lower order of animals," or "to adopt or use in any such institution a textbook that teaches" this theory. Mr. Justice Fortas, in delivering the Court's opinion, said: "The State's undoubted right to prescribe the curriculum for its public schools does not carry with it the right to prohibit, on pain of criminal penalty, the teaching of a scientific theory or doctrine..." [114:107].

Freedom from Vague Regulations

> Regulations governing the school as a whole should be fully and clearly formulated, published, and made available to all members of the school community. They should be reasonable. Specific definitions are preferable to such general criteria as "conduct unbecoming a student" and "against the best interests of the school," which allow for a wide latitude of interpretation. [8-17]

So states the ACLU with regard to student discipline.

Ackerly appeals to school officials to respect the constitutional rights of students when codes of behavior are formulated [2:10].

Vagueness and generality were the deciding factors in at least two cases previously discussed [132, 149]. The *Myers* case [132], involving the suspension of a student whose long hair violated a school ban against "extremes of hair styles," resulted in the California Supreme Court's affirmation of a lower court's decision to issue a writ of mandate. The February 10, 1969, decision pointed to the absence of established criteria by which a school official could determine whether a given hairstyle was extreme or not. In the words of Judge Rattigan, "The 'dress policy' concerning hair styles in the present case is 'vague and standardless'" [132:560].

The underground-newspaper case of *Sullivan v. Houston Independent School District* [149] centered on the expulsion of two

students for violating unwritten "school regulations." The school principal testified he had based his disciplinary action on the following school district regulation: "The school principal may make such rules and regulations that may be necessary in the administration of the school and in promoting its best interests. He may enforce obedience to any reasonable and lawful command" [149:1343]. Of this regulation, the federal district court declared: "Little can be said of a standard so grossly overbroad as 'in the best interests of the school.' It cannot be contended that it supplies objective standards by which a student may measure his behavior or by which an administrator may make a specific ruling in evaluation of behavior" [149:1345-1346].

The court also commented:

> School rules probably do not need to be as narrow as criminal statutes but if school officials contemplate severe punishment they must do so on the basis of a rule which is drawn so as to reasonably inform the student what specific conduct is proscribed. Basic notions of justice and fair play require that no person shall be made to suffer for a breach unless standards of behavior have first been announced, for who is to decide what has been breached? [149:1344-1345]

The court added that "generalities can no longer serve as standards of behavior when the right to obtain an education hangs in the balance" [149:1346]. Accordingly, it declared the regulation vague and overbroad.

Right to Due Process

The 1960s witnessed the end to school authorities' autonomy in invoking suspensions, expulsions, or other serious disciplinary actions against students. Court cases, involving college students first and secondary students later, altered the role of administrative authority. Educational and legal literature soon reflected endorsements of the principle of "fair play" in student discipline—particularly in instances where punishment involved the temporary or permanent removal of a student from school, or notations on school records regarding disciplinary action [1,2,46,50,63,70, and 77].

The following procedural standards are advocated by Ackerly and/or the ACLU for infractions that could result in serious penalties:

1. Notice of hearing, including
   a. the time and place

b. a statement of the alleged infraction(s)
c. a declaration of the student's right to legal counsel
d. a description of the procedures to be followed in the hearing

2. Conduct of hearing, including
   a. advisement of student's right to remain silent
   b. the presentation of evidence and witnesses against the student
   c. cross-examination of the accusatory evidence
   d. the presentation of witnesses on behalf of the student
   e. the recording (either by tape or in writing) of the proceedings
3. Finding(s) of hearing, including
   a. recommendation(s) for disciplinary action, if any
   b. reporting of findings to appropriate school authorities (e.g., the Board of Education) and to the student
4. Prompt application of disciplinary measure(s), if any, including the right of appeal. [2:14-16, 8:17-18]

According to Ackerly, in some cases—presumably where the health or safety of other students is threatened—a principal may be justified in suspending a student while a hearing is pending [2:14]. Ackerly suggests that the hearing itself be conducted before a panel consisting of, for instance, one member appointed by the principal and four members—two students and two teachers—selected by lot. "Selecting a panel by lot," he states, "approaches the jury system and should obviate charges of discrimination" [2:15].

> In those instances where the student is being exposed to a serious penalty because of an accumulation of minor infractions which had been handled in summary fashion, or any instance where evidence of prior infractions so handled is presented at the hearing by the administration, the student (his parent, guardian, or other representative) should be permitted to reopen those charges and present evidence in support of the contention that he was wrongfully accused and/or convicted of the minor infraction. [8:18]

Except for *Woods v. Wright* [132], which was decided in 1964, all decisions pertaining to procedural due process in the 1960s came in the last half of the decade. Since the *Woods* case involved the expulsion of a student for participating in an off-campus demonstration, it is discussed in the following section.

The first procedural issue involving a school-age person arose not from disciplinary action at a school but from a civil case. A fifteen-year-old boy who had made lewd telephone calls was placed in a reformatory school [123]. In the adjudication of his detention, the United States Supreme Court set forth procedural standards for juveniles, including a written notice of charges, the right to counsel, the right to confront witnesses, the freedom from self-incrimination, and the right to cross-examine.

The Supreme Court of Queens County (New York) announced a decision on June 23, 1967, involving a senior at Flushing High School who had been denied credit for a state examination she had completed [116]. Near the end of the three-hour state Regents Examination in American History and World Backgrounds III, a proctor noticed Marsha Goldwyn referring to notes contained on both sides of a yellow sheet of paper. (Two sheets of yellow scrap paper had been given to each student at the beginning of the test.) The incident was called to the attention of school authorities, to whom Miss Goldwyn explained that she had written the notes during the first half-hour of the examination. When asked to repeat that feat, she was unable to copy more than a fourth of the notes during a twenty-minute period, leading the school's acting principal to conclude that she could not possibly have written the original set of notes at the beginning of the examination period. Upon further questioning by him, Miss Goldwyn confessed to cheating.

On January 31, 1967, the acting principal informed the Department of Education in writing that Miss Goldwyn had cheated on the examination. Consequently, she was denied permission to repeat the examination for one year—and only then "if the behavior of the pupil has been exemplary."

At issue in the resulting litigation was whether the student had been denied her constitutional rights to a fair hearing. The court ruled for the student, saying, "The Department of Education deprived . . . [her] of her rights by imposing sanctions predicated solely on the letter of the acting principal without a hearing to ascertain the truth of the charges at which she might defend herself with the assistance of counsel" [116:905].

Three decisions in 1969 involved the right to a hearing in disciplinary actions against high school students [146, 149, 131]. Two, *Vought* [131] and *Sullivan* [149], were reviewed under the preceding heading "Freedom of Expression." In *Vought*, the court ordered that a hearing be held in accordance with the following standards:

1. Issuance of a notice at least five days prior to the hearing, in which charges and grounds for expulsion are presented
2. A hearing with both sides afforded an opportunity to hear each other in considerable detail
3. The reporting of names of witnesses against the student
4. An opportunity for the student to offer his own defense.

And in *Sullivan* [149], school authorities were prohibited from

suspending or expelling "for a substantial period of time . . . students who are guilty of any misconduct without compliance with minimal standards of procedural due process." These standards include:

1. Formal written notice of the charges and of the evidence against him must be provided to the student and his parents or guardian
2. Formal hearing affording both sides ample opportunity to present their cases by way of witnesses or other evidence
3. Imposition of sanctions only on the basis of substantial evidence.

The third case of the year (announced prior to *Vought* and *Sullivan)* grew out of a teacher-student conflict that resulted, the next day, in the student's expulsion from an Ohio high school by the superintendent [146]. The superintendent's action followed a hearing by the board of education at which no vote was taken. In a suit for mandamus, the Court of Appeals for Montgomery County held that a vote by the board was *not* necessary to sustain the expulsion of a student. "Unless there is a public vote to reinstate, the expulsion by the superintendent stands," Judge Crawford announced [146:333]. The court expressed grief over the severe penalty suffered by the student in this case, but commented, "in the long run it is not always the kindest course to shield the young from the consequences of their own misconduct" [146:333]. At the time of his suspension, the student needed less than an hour of credit to graduate in June.

Two cases announced in the 1960s pertained to the presence of an attorney at hearings [108, 127]. In *Cosme v. Board of Education* [108], an attorney had been excluded from a hearing to discuss a student's temporary suspension from a New York school. The Supreme Court of New York County ruled that "because the hearing or conference is administrative in nature, the petitioner [parent of the student] is not entitled to be represented by Counsel" [108:232]. The court added, "In fact, the very purpose of the interview would be frustrated or impeded by presence of Counsel, who might be tempted to turn the conference into a quasi-judicial hearing" [108:232].

The other case tested a New York City School Board regulation prohibiting the attendance of an attorney at "guidance" conferences or hearings. The federal district court declared the regulation invalid:

> . . . enforcement . . . of the "no attorneys provision . . ." deprives plaintiffs of their right to a hearing in a state initiated proceeding which puts

in jeopardy the minor plaintiff's liberty and right to attend the public schools. . . . [127:369]

Fundamental fairness dictates that a student cannot be expelled from a public educational institution without notice and hearing. . . . The need for procedural fairness in the state's dealing with college students' right to public education . . . should be no greater than the need for such fairness when one is dealing with the expulsion or suspension of juveniles from the public schools. [127:373]

Off-Campus Freedoms

The ACLU argues that school officials should have no jurisdiction over a student's nonschool activities, "provided the student does not claim without authorization to speak or act as a representative of the school or one of its organizations" [8:15]. Furthermore, if a student violates a civil law in a non-school-related activity, the ACLU advises school authorities to leave punishment of the student solely in the hands of civil authorities.

When a student chooses to participate in out-of-school activities that result in police action, it is an infringement of his liberty for the school to punish such activity, or to enter it on school records or report it to prospective employers or other agencies, unless authorized or requested by the student. A student who violates any law risks the legal penalties prescribed by civil authorities. He should not be placed in jeopardy at school for an offense which is not concerned with the educational institution. [8:15]

In addition to the *Holroyd* case [121], which involved student membership in off-campus social organizations (see "Freedom of Association"), the courts ruled three times during the 1960s on the off-campus activities of precollege students [122, 149, 152]. In *Woods v. Wright* [152], litigation ensued after Linda Cal Woods (a Negro pupil at Washington School in Birmingham) was suspended for the remainder of the school term because of her participation in an unlicensed civil rights demonstration held off-campus on Saturday, May 4, 1963—a nonschool day. Miss Woods was suspended without a hearing or an opportunity to offer defense. Judge Jones of the Fifth Circuit Court of Appeals ruled on July 20, 1964, that a temporary restraining order should have been granted by a lower court.

Robert Tracy Howard III and Douglas Herman, students at New Rochelle (New York) High School in March 1969, were suspended from school for having been arrested by municipal police a week earlier and charged with the criminal possession of a hypodermic needle [122]. The students also reportedly possessed a quantity of heroin at the time of their arrest. In dismissing them, the school

superintendent relied on a board of education resolution stating that a student may be suspended "upon his indictment or arraignment in any court . . . for any criminal act of a nature injurious to other students or school personnel . . ." [122:66].

A Westchester County court adjudicated the case, which tested the legality of the board's resolution. The court held that students could not be barred from school on the grounds "that they are insubordinate or disorderly; nor that their physical or mental condition endangers the health, safety or morals of themselves or other minors." Moreover, the court ruled that the *mere possession* of heroin does not justify suspension, even though "the use of heroin by students off the high school premises bears a reasonable relation to and *may* endanger the health, safety and morals of other students" [122:67] [emphasis added]. The court directed the school officials to reinstate the students in the school and to "expunge" from school records any notation regarding the suspensions.

The *Sullivan* underground-newspaper decision [149] dealt, in part, with off-campus activities. In that case, the court said:

> It is not clear whether the law allows a school to discipline a student for his behavior during free time away from the campus. [References to law reviews] In this court's judgment, it makes little sense to extend the influence of school administration to off-campus activity under the theory that such activity might interfere with the function of education. School officials may not judge a student's behavior while he is in his home with his family nor does it seem to this court that they should have jurisdiction over his acts on a public street corner. A student is subject to the same criminal laws and owes the same civil duties as other citizens, and his status as a student should not alter his obligations to others during his private life away from the campus.
>
> Arguably, misconduct by students during non-school hours and away from school premises could, in certain situations, have such a lasting effect on other students that disruption could result during the next school day. Perhaps then administrators should be able to exercise some degree of influence over off-campus conduct. This court considers even this power to be questionable.
>
> However, under any circumstances, the school certainly may not exercise more control over off-campus behavior than over on-campus conduct. Serious disciplinary action concerning first amendment activity on or off campus must be based on the standard of substantial interference with the normal operations of the school. [149:1340-1341]

Rights of Married Students and Mothers

The ACLU steadfastly upholds the right of married students and mothers to continue their education.

> The right to an education provided for all students by law should not be abrogated for a particular student because of marriage or pregnancy unless there is compelling evidence that his or her presence in the classroom or school does, in fact, disrupt or impair the educational process for other students. This includes the right to participate in all the activities of the school. If temporary or permanent separation from the school should be warranted, the education provided elsewhere should be qualitatively and quantitatively equivalent to that of the regular school, so far as is practicable. [8:20]

In addition to the *Marino* case [128], discussed earlier under "Freedom of Association," nine litigious proceedings during the 1960s involved married students [94,95,98,99,106,107,136,144,145]. Only one case dealt with the pregnancy of a student, *State ex rel. Idle v. Chamberlain* [147]. Decided by the Common Pleas Court of Ohio in 1961, the case involved a sixteen-year-old married student at Trenton High School who was banned from classes on February 18, 1961, because she was pregnant. Two days earlier, the Trenton Board of Education had adopted a regulation stating, "Pregnant students are to withdraw from school attendance immediately upon knowledge of pregnancy. School officials may demand a doctor's examination in cases of question" [147:340].

The student was allowed to continue her studies at home and to receive full credit for them. However, three months after being dismissed from school, she (through her father) sought a writ of mandamus. The court held that the board, in passing the regulation in question, had not abused its authority or discretion in applying the regulation to the student. The court therefore denied the writ. In effect, this ruling announced that married students could attend school, but pregnant students could not. After giving birth to the baby, the mother could reenter school.

Four cases resulted in decisions approving school restrictions against married students.

First of these was a Michigan case [107] decided by the state supreme court on June 7, 1960. Action was brought when two football players were barred from participating in the sport following their respective marriages. The state attorney general intervened on the students' behalf, claiming that the board's action was punitive and designed to humiliate and ridicule married students and thereby discourage other student marriages. "The concept of the law is to protect, not to attack, the state of matrimony, and to exalt, not to undermine, the security of legal marriages," argued the attorney general [107:369]. He further con-

tended that the proper way to oppose high school marriages was through legislation (e.g., raising the age limit for marriage), "not through school board interference with the prerogatives of the legislature, the parents, and the church" [107:570]. While a majority of the justices voted against the legality of the board rule on a divided four-three vote, the district court decision upholding the board of education was not overruled, because the court split evenly four-four on the issue that the question was moot. (The plaintiff in question having already graduated from high school). The district court decision was allowed to stand on this procedural point, therefore, although on the substantive issue of the legality of the rule prohibiting the participation of married students in extracurricular activities, a majority of the Justices who voted on this issue held that it was unenforceable.

Another case [143] involved Michael Baker, a sixteen-year-old senior at Taft High School in Hamilton, Ohio. Approximately three months after his marriage in February 1962, the board of education adopted a "Code of Ethics" that prohibited married students from participating in extracurricular activities. The code was to go into effect at the beginning of the 1962-63 school year. The board gave as the reason for its action a "moral problem existing in the community" [143:183]. Baker, a member of the basketball team that had won the state championship the preceding season, applied for a writ of mandamus. He attacked the rule as arbitrary, unreasonable, discriminatory, and v[illegible]ve of public policy in that it penalized marriage.

The Court of Common Pleas denied the writ, stating that a rule is always presumed to be reasonable and proper unless proved otherwise. In this case, the court viewed the board's rule as reasonable and proper in that it attempted to "discourage juvenile marriages because such marriages result in student 'dropouts'" [143:184]. The court observed that athletes set patterns of conduct for other students: "If any married students are in a position of idolization, the more desirous is the group to mimic" [143:185].

The court, observing that the student was married, the father of a child, and employed twenty hours per week after school, asked, "Would not the required and regular basketball practice which takes place after school seriously interfere with his employment? Would not attendance at extracurricular club meetings and affairs create a problem affecting his and his wife's family life?" [143:186]. Success in marriage is enhanced, the court said, "where in-

terests of the husband or wife outside of and not connected with the home or marriage as such, are kept to a minimum" [145:186].

As to the contention that the rule penalized married persons, the court said that Ohio public policy is not favorable to "underage" marriages, since consent for males under eighteen years of age (and females under sixteen) must be given by the juvenile judge. "Any policy which is directed toward making juvenile marriages unpopular and to be avoided should have the general public's whole-hearted approval and support," said the court [145:187].

The court further held that no vested right had been taken away from the student and, therefore, that the rule could not be termed retroactive. "That which he contends for amounts to no more than a contingent or expectant right in contrast to a vested right which is an immediate, fixed right of present or future enjoyment," the court declared [145:187].

Regarding the possibility that the student might have won a college athletic scholarship if he had been permitted to play basketball during his final year of high school, the court commented, "It doesn't necessarily follow that his abstention from play during his senior year would diminish his athletic prospects" [145:187]. The court advanced a number of reasons the student might not win an athletic scholarship—physical injury, responsibilities as a father, and "other things."

The court rejected an opinion of the state attorney general that "a board of education may not lawfully adopt a regulation prohibiting married students from participation in extra-curricular activities" [145:187].

The third decision during the 1960s that upheld a school board's rule on married students was *Starkey v. Board of Education* [144]. A student, James H. Starkey, was prevented by the board of education from participating in extracurricular activities at Davis County High School (Utah) following his marriage during the 1962 Christmas recess. He contested the board's action on state and federal constitutional grounds—especially the Fourteenth Amendment (due process and equal protection).

In announcing the decision of the Utah Supreme Court, Justice Crockett said:

> It is not for the courts to be concerned with the wisdom or propriety of the resolution as to its social desirability, nor whether it best serves the

objectives of education, nor with the convenience or inconvenience of its application to the plaintiff in his particular circumstances. So long as the resolution is deemed by the Board of Education to serve the purpose of best promoting the objectives of the school and the standards for eligibility are based upon uniformly applied classifications which bear some reasonable relationship to the objectives, it cannot be said to be capricious, arbitrary or unjustly discriminatory. . . .

We have no disagreement with the proposition advocated that all students attending school should be accorded equal privileges and advantages. But the participation in extracurricular activities must necessarily be subject to regulations as to eligibility. Engaging in them is a privilege which may be claimed only in accordance with the standards set up for participation. [144:721]

In January 1967, the Supreme Court of Iowa considered a similar case [98]. Ronald Green had been a regular player on the East Waterloo Public High School basketball team during the school year preceding his wedding in August 1965. When told that he could not play on the team because of a rule banning married students from extracurricular activities, he began litigation. The state supreme court, in a six-to-three decision that reversed a lower court's ruling, declared the board's action reasonable, unarbitrary, and nonviolative of the Fourteenth Amendment:

> . . . [I]t is not for us to concern ourselves with the matter of expediency of a given board rule. The duty of all courts, regardless of personal views or individual philosophies, is to uphold a school regulation unless it is clearly arbitrary and unreasonable. Any other approach would result in confusion detrimental to the management, progress and efficient operation of our public school system. It would in effect serve to place operational policies of our schools in the hands of the courts which would be clearly wrong if not unconstitutional. [98:858]

The first of four decisions favoring married students was announced on October 30, 1964, by the Kentucky Court of Appeals [99]. Joy Burgin Bentley was married on April 10, 1964, while a junior at Harrodsburg High School. She was allowed to complete the remaining one and one-half weeks of the term before being dropped from the school rolls on April 24, 1964. Her dismissal was based on a 1957 school board regulation that provided for the automatic suspension of a married student for one full year. The court termed this rule "arbitrary and unreasonable," and stated, "The fatal vice of the regulation lies in its sweeping, advance determination that every married student, regardless of the circumstances, must lose at least a year's schooling" [99:680].

Two years later, a Texas court considered a rule that forbade Kathy Ann Cooper, a married mother, from reentering a public high school [94]. The regulation provided:

> A pupil who marries can no longer be considered a youth. By the very act of getting married, he or she becomes an adult and assumes the responsibility of adulthood. As a married student he or she shall not serve as an officer of the student body or any class or school organization. A married pupil shall not represent the school in an interschool contest or activity and classes. If a married pupil wants to start her family, she must withdraw from public school. Such a pupil will, however, be encouraged to continue her education in the local adult education program and correspondence courses. [94:77]

Chief Justice Bell of the Court of Civil Appeals stated that the school board lacked legal authority to adopt the regulation.

The same court adjudicated another married-student case less than a year later [93]. On February 28, 1967, Chief Justice Denton of the Texas Court of Appeals declared unreasonable and arbitrary the following regulation: "Students who marry during the school term must withdraw from school for the remainder of the school year" [93:388]. Judy Rae Anderson, a sixteen-year-old ninth-grade student, withdrew from school on December 21, 1966, and was married a week later. Having moved to Canyon, Texas, on January 1, she applied a few days later for admission to the Canyon Junior High School. Although school officials admitted she qualified in all other respects, they denied her admission on the basis of the rule.

Disagreeing with the majority opinion to reverse the lower court and render a writ of mandamus, Justice Northcutt said, "School principals, superintendents, and school officials who deal with the pupils daily and plan for their different courses and general welfare are more competent to say what is reasonable, proper and to the best interest of the whole student body than I am when there is no showing that this rule was passed without due discussion and consideration" [93:392].

In 1969, the same court considered still another case relating to married students: *Carrollton-Farmers Branch Independent District v. Knight* [106]. Sallye Anne Thompson, aged eighteen, and Tex Lloyd Knight, seventeen, were married on January 13, 1967. Both were students at R. L. Turner High School. On January 16, the two were suspended in accordance with a 1959 school regulation. The rule stated that, after being married, a student should report to the principal's office for reinstatement, and that after a certain

period readmission would be granted. Furthermore, the rule barred all married students from participation in extracurricular activities.

Not until ten days after the suspension of the newly married couple did the school board clarify the length of time such a suspension would be. In a new resolution, the board specified that married students would be suspended for three weeks before being eligible to reapply for admission.

In announcing its decision, the court, speaking through Justice Fanning, said: "We think the weight of authority in Texas and in the United States is to the effect that marriage alone is not a proper ground for a school district to suspend a student from attending school for scholastic purposes only" [106:542]. Accordingly, the court affirmed a lower court's issuance of a temporary injunction against the school board's order that had suspended the students.

Perry v. Grenada Municipal Separate School District [136] involved neither married nor pregnant students, but two unwed mothers. Both filed complaints seeking a preliminary and permanent injunction compelling the school district of Grenada, Mississippi, to admit them to the public schools. In holding that the school district could not exclude the students from the schools solely because they were unwed mothers, the court said:

> . . . lack of moral character is certainly a reason for excluding a child from public education. But the fact that a girl has one child out of wedlock does not forever brand her as a scarlet woman. . . . If [however] the board is convinced that a girl's presence will taint the education of the other students, then exclusion is justified. [136:758]

The court held that the students were entitled to readmission unless, in a fair hearing before school authorities, they were found so lacking in morals that their presence in the schools would "taint the education of other students."

III. SUMMARY, CONCLUSIONS, AND PROJECTIONS

Summary

The modern era of student activism began in the 1960s on the campuses of colleges and universities. From this beginning, student unrest spread rapidly to other levels of education, including secondary and elementary. Students at all levels today are de-

manding their rights as human beings and are challenging rules, regulations, and actions of individuals and organizations that infringe on such rights.

More than fifty recent decisions rendered by state or federal courts on rights of public school students are reviewed in this paper. These decisions reveal no absolute rights or freedoms; however, in certain instances, the following rights or freedoms have been supported by the courts:

1. The freedom of symbolic expression (e.g., freedom buttons) as long as such expression does not cause disruption [103,130]
2. The freedom of written expression (e.g., underground newspapers) as long as such expression does not cause disruption [149,153]
3. The right to refuse to wear prescribed physical education clothing [129] and the right to wear slacks to school [141]
4. The right of male students to wear long hair if the prohibitive rule is vaguely worded [132] or too broadly drawn [133], if distraction is not shown [100], if the school regulation is arbitrary or unreasonable [118], or if length of hair does not involve a health or safety risk [138]
5. The right to public education free of religious overtones [91, 113,131]
6. Freedom from racial discrimination [117,120,124]
7. Freedom from vague regulations [132,149]
8. The right to procedural due process, including notice of hearing [116,123,151], presence of legal counsel [123,127], cross-examination or confrontation of witnesses [123,151], and freedom from self-incrimination [123]
9. Off-campus freedoms such as participation in a civil rights activity [152] and possession of personal articles [122]
10. The right of married students [94,95,99,106] and unwed mothers [136] to attend public schools.

It would be erroneous to suggest that the above list includes all the rights and freedoms to which public school students are entitled. Various court decisions pertaining to other levels of education [e.g., *Dickey v. Alabama State Board of Education,* 273 F. Supp. 613 (Ala., 1967), regarding censorship of a college-sponsored newspaper] or to noneducation matters [e.g., *Miranda v. Arizona,* 384 U.S. 436 (1966), regarding warnings that policemen must give to arrested persons] may be relevant to public school students.

Conclusions

Three conclusions from this investigation seem justified. First, many of the issues litigated in the courts would not have arisen had administrators and school boards been more attuned to the legal, judicial, and social tenor of American society. Second, secondary and elementary school students in recent years have become much more inclined to challenge school rules and regulations. And third, federal and state courts have become more willing to accept cases involving the internal affairs of public education. The net effect of these three factors has been a dramatic increase in the number of court cases involving precollege students during the 1960s.

Unless school administrators exercise creative and imaginative leadership, educational policies will be increasingly determined by federal and state courts. Because of their key positions in the educational bureaucracy, administrators can best create or instigate change. Therefore, they have the greatest responsibility to alleviate conditions that would otherwise lead to costly and time-consuming court proceedings. The following actions may help them avoid such problems:

1. Learning and complying with the laws of their respective states as well as with the rule., regulations, and attitudes of their school boards
2. Listening to students (and faculty and laymen) who wish to express grievances about rights and freedoms, even if such claims are ill-founded
3. Responding to student demands that, if implemented, would not jeopardize the health or safety of individuals or substantially and materially interfere with the school's educational process
4. Reviewing all school rules and regulations, discarding the irrelevant or illegal, and rewording the vague or ambiguous
5. Disseminating written rules and regulations to all students, faculty, support staff, and fellow administrators
6. Providing for the prescribed standards of procedural due process where the alleged misconduct could result in serious punishment—e.g., suspension or expulsion
7. Institutionalizing student participation in the governance of the school
8. Providing opportunities for students and faculty to become

better informed about legal and judicial affairs—perhaps through a series of programs featuring attorneys, law professors, and judges

9. Encouraging the teaching of law in the school's academic program, with emphasis on respect for law rather than on respect for authority
10. Endorsing humanism as a right—i.e., the right of all individuals (including students) to be treated with the same dignity and respect as other members of society.

Projections

Predicting the future course of the American judiciary—even in the restricted area of student rights—is, at best, a chancy undertaking. Nevertheless, trends established in the 1960s point to certain rulings in the years ahead and suggest possible areas of new litigation.

Fairly firm trends can be seen in freedom of association, freedom from religion, freedom from discrimination, freedom from vague regulations, and rights to procedural due process. No drastic change in judicial interpretations in these areas of student rights is foreseen, though more definitive pronouncements on some aspects of them may be forthcoming—e.g., the amount of time required between the notice of a hearing and the hearing itself.

The courts have been less definite in their interpretations of other student rights. Differences among, or a lack of, opinions in each of the following areas provides little basis for prediction: freedom of expression, freedom of dress and appearance, freedom from unauthorized searches, freedom to learn, off-campus freedoms, and rights of married or pregnant students. Symbolic expression is a likely field of future litigation; courts are likely to uphold such expression as long as it does not substantially and materially interfere with the school program. Another fertile area for new court tests is searches of students—their persons, their lockers, and their belongings.

Whether the established trends continue throughout the years ahead and whether the developing trends fall into a discernible pattern remain to be seen.

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